

8-28-2008

# St. Alphonsus Diversified Care, Inc. v. MRI Assocs., LLP Clerk's Record v. 6 Dckt. 34885

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/  
idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

## Recommended Citation

"St. Alphonsus Diversified Care, Inc. v. MRI Assocs., LLP Clerk's Record v. 6 Dckt. 34885" (2008). *Idaho Supreme Court Records & Briefs*. 1988.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/1988](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/1988)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

SAINT ALPHONSUS DIVERSIFIED CARE, INC.,  
an Idaho nonprofit corporation,

PLAINTIFF-APPELLANT-CROSS RESPONDENT,

vs.

MRI ASSOCIATES, LLP,  
an Idaho limited liability partnership,

DEFENDANT-RESPONDENT-CROSS APPELLANT.

*Appealed from the District Court of the Fourth Judicial  
District of the State of Idaho, in and for ADA County*

*Hon MICHAEL MCCLAUGHLIN, District Judge*

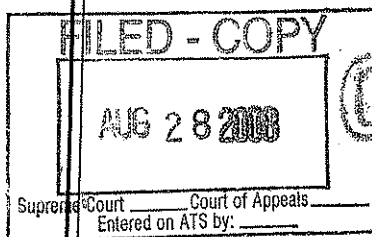
JACK S. GJORDING

*Attorney for Appellant*

THOMAS A. BANDUCCI

*Attorney for Respondent*

VOLUME VI



34885

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
-------------------------------	-----------------

## VOLUME I

REGISTER OF ACTIONS .....	3
COMPLAINT AND DEMAND FOR JURY TRIAL, FILED OCTOBER 18, 2004 .....	55
ANSWER TO COMPLAINT AND COUNTERCLAIM, FILED MAY 20, 2005 .....	63
ANSWER TO COUNTERCLAIM, FILED JUNE 24, 2005 .....	81
SCHEDULING ORDER, FILED JULY 29, 2005 .....	90
ORDER TO FILE DOCUMENTS UNDER SEAL, FILED DECEMBER 6, 2005 .....	95
MEMORANDUM DECISION ON PLAINTIFF'S/COUNTERDEFENDANTS' MOTION TO ESTABLISH ABSENCE OF GROUNDS FOR DISQUALIFICATION, FILED JANUARY 19, 2006 .....	98
MOTION FOR LEAVE TO FILE FIRST AMENDED COUNTERCLAIM AND THIRD- PARTY COMPLAINT, FILED JANUARY 31, 2006 .....	109
MEMORANDUM DECISION ON DEFENDANT/COUNTERCLAIMANT'S MOTION TO COMPEL, FILED FEBRUARY 13, 2006 .....	112
REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE FIRST AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT, FILED FEBRUARY 21, 2006 .....	120
MEMORANDUM DECISION ON DEFENDANT/COUNTERCLAIMANT'S MOTION FOR LEAVE TO AMEND COUNTERCLAIM AND THIRD PARTY COMPLAINT, FILED MARCH 7, 2006 .....	130
FIRST AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT, FILED MARCH 7, 2006 .....	141
AMENDED SCHEDULING ORDER, FILED MARCH 20, 2006 .....	180
MRI ASSOCIATES' MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED MARCH 21, 2006 .....	186
NON-IDAHO CASES IN SUPPORT OF MRIA'S MOTION FOR SUMMARY JUDGMENT, FILED MARCH 21, 2006 .....	190

**TABLE OF CONTENTS.....PAGE NO.**

**VOLUME II**

NON-IDAHO CASES IN SUPPORT OF MRJA'S MOTION FOR SUMMARY JUDGMENT, FILED MARCH 21, 2006 (Continued) .....	200
SAINT ALPHONSUS DIVERSIFIED CARE, INC'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S ANSWER TO AMENDED COUNTERCLAIM, FILED APRIL 14, 2006 .....	272
MEMORANDUM DECISION ON DEFENDANTS/COUNTERCLAIMANTS' MOTIONS TO COMPEL, MOTION TO QUASH SUBPOENAS AND MOTION FOR PROTECTIVE ORDER, FILED APRIL 17, 2006 .....	291
THIRD PARTY DEFENDANTS' ANSWER TO THIRD PARTY COMPLAINT, FILED APRIL 28, 2006 .....	311
MEMORANDUM DECISION AND ORDER, FILED MAY 3, 2006.....	332
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTERS INC.'S MOTION TO STRIKE, FILED MAY 5, 2006 .....	337
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED MAY 5, 2006 .....	341
SAINT ALPHONSUS DIVERSIFIED CARE, INC. AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, FILED MAY 5, 2006 .....	345
SAINT ALPHONSUS' NOTICE OF ERRATA RE: MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED MAY 8, 2006 .....	349
MRJA'S NOTICE OF ERRATA RE: MEMORANDUM IN SUPPORT OF MRJA'S MOTION FOR SUMMARY JUDGMENT, FILED MAY 26, 2006.....	354
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S SECOND MOTION TO STRIKE IN CONNECTION WITH SUMMARY JUDGMENT PROCEEDINGS, FILED MAY 30, 2006.....	357
NON-IDAHO CASES CITED IN MEMORANDUM IN OPPOSITION TO SADC AND SARMC MEMORANDUM IN SUPPORT OF MOTION TO STRIKE, FILED MAY 30, 2006 .....	361

**TABLE OF CONTENTS.....PAGE NO.**

NON-IDAHO CASES CITED IN REPLY MEMORANDUM IN SUPPORT OF MRIA'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED MAY 30, 2006 .....367

MEMORANDUM DECISION ON PLAINTIFF'S MOTIONS TO STRIKE, CROSS-  
MOTIONS FOR SUMMARY JUDGMENT, AND PLAINTIFF/THIRD PARTY  
DEFENDANT'S MOTION TO DISMISS, FILED JULY 24, 2006.....384

**VOLUME III**

MOTION FOR RECONSIDERATION, OR, IN THE ALTERNATIVE, FOR PERMISSION TO  
APPEAL, FILED AUGUST 7, 2006 .....408

MRIA'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION, OR, IN  
THE ALTERNATIVE, FOR PERMISSION TO APPEAL, FILED  
AUGUST 25, 2006 .....412

MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER, FILED  
AUGUST 28, 2006 .....433

SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED  
AUGUST 28, 2006 .....438

ST. LUKE'S REGIONAL MEDICAL CENTER LTD'S MOTION TO QUASH DEFENDANT  
MRI ASSOCIATES, LLP'S SUBPOENA DUCES TECUM AND FOR PROTECTIVE  
ORDER, FILED AUGUST 28, 2006 .....444

MOTION TO QUASH SUBPOENA TO HEALTHSOUTH TREASURE VALLEY HOSPITAL  
DIAGNOSTIC IMAGING, FILED AUGUST 29, 2006.....449

OPPOSITION TO BOISE ORTHOPEDIC CENTERS OF IDAHO'S MOTION TO QUASH  
AND MOTION FOR PROTECTIVE ORDER, FILED AUGUST 29, 2006 .....462

PINACLE IMAGING'S AND INTERMOUNTAIN ORTHOPAEDICS' MOTION TO QUASH  
AND MOTION FOR PROTECTIVE ORDER, FILED AUGUST 29, 2006 .....471

ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF  
TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....475

ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF  
TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....479

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....	483
ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....	487
ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....	491
MOTION TO COMPEL MRJA FINANCIAL STATEMENTS, FILED OCTOBER 10, 2006 .....	495
NOTICE OF MOTION AND MOTION FOR RECONSIDERATION, FILED OCTOBER 10, 2006 .....	499
PINNACLE IMAGING'S AND INTERMOUNTAIN ORTHOPAEDICS' JOINDER IN ST. LUKE'S, HEALTHSOUTH'S AND BOISE ORTHOPAEDIC CLINIC'S OPPOSITIONS TO MRI ASSOCIATES' MOTION FOR RECONSIDERATION, FILED OCTOBER 17, 2006.....	503
OPPOSITION TO MRI ASSOCIATES LLP'S, MOTION TO RECONSIDER COURT'S ORDER QUASHING SUBPOENA DIRECTED TO ORTHOPEDIC CENTERS OF IDAHO, D/B/A BOISE ORTHOPEDIC CLINIC, FILED OCTOBER 17, 2006.....	507
ST. LUKE'S REGIONAL MEDICAL CENTER LTD.'S OPPOSITION TO MOTION TO RECONSIDER DECISION TO QUASH MRJA'S ANTITRUST SUBPOENAS, FILED OCTOBER 17, 2006 .....	511
OPPOSITION TO MOTION TO COMPEL MRJA FINANCIAL STATEMENTS, FILED OCTOBER 18, 2006 .....	527
MEMORANDUM DECISION ON DEFENDANTS MOTION FOR RECONSIDERATION, OR, IN THE ALTERNATIVE, FOR PERMISSION TO APPEAL, FILED OCTOBER 23, 2006 .....	532
MEMORANDUM DECISION ON PLAINTIFF'S MOTIONS TO COMPEL; DEFENDANT'S MOTION TO EXTEND PRETRIAL DEADLINES; DEFENDANT'S MOTION FOR RECONSIDERATION; THIRD-PARTY DEFENDANT'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCE DOCUMENTS; THIRD- PARTY DEFENDANT'S MOTION TO STRIKE MRJA'S OBJECTION TO PRODUCING MOFFAT THOMAS DOCUMENTS, FILED NOVEMBER 2, 2006 .....	549

**TABLE OF CONTENTS.....PAGE NO.**

MEMORANDUM DECISION AND ORDER TO RESET THE TRIAL DATES, FILED NOVEMBER 22, 2006 .....	565
AMENDED MEMORANDUM DECISION ON PLAINTIFF'S MOTIONS TO COMPEL; DEFENDANT'S MOTION TO EXTEND PRETRIAL DEADLINES; DEFENDANT'S MOTION FOR RECONSIDERATION; THIRD-PARTY DEFENDANT'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCE DOCUMENTS; THIRD-PARTY DEFENDANT'S MOTION TO STRIKE MRJA'S OBJECTION TO PRODUCING MOFFAT THOMAS DOCUMENTS, FILED DECEMBER 6, 2006.....	570
MEMORANDUM DECISION ON DEFENDANT/COUNTERCLAIMANTS/THIRD-PARTY PLAINTIFF'S MOTION FOR CLARIFICATION, FILED DECEMBER 6, 2006 .....	580
MOTION FOR LEAVE TO FILE SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT, FILED DECEMBER 20, 2006 .....	586

**VOLUME IV**

MOTION FOR LEAVE TO FILE SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT, FILED DECEMBER 20, 2006 (Continued) .....	601
MOTION TO AMEND TO SEEK PUNITIVE DAMAGES, FILED DECEMBER 20, 2006.....	674
NOTICE OF HEARING, FILED DECEMBER 20, 2006.....	677
MOTION TO SEAL MEMORANDUM IN SUPPORT OF MRJA'S MOTION TO AMEND FIRST AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT, FILED DECEMBER 21, 2006.....	680
ERRATA SHEET RE: AFFIDAVIT OF PROFESSOR DOUGLAS M. BRANSON, FILED DECEMBER 21, 2006.....	683
MOTION FOR PARTIAL SUMMARY JUDGMENT RE: LEASE TERM, FILED DECEMBER 28, 2006.....	689
ORDER TO SEAL MEMORANDUM IN SUPPORT OF MRJA'S MOTION TO AMEND FIRST AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT, FILED DECEMBER 28, 2006.....	693

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
MOTION TO STRIKE AFFIDAVIT OF PROFESSOR DOUGLAS M. BRANSON, FILED JANUARY 4, 2007 .....	697
MOTON FOR SUMMARY JUDGMENT, FILED JANUARY 4, 2007 .....	701
MOTION TO STRIKE REFERENCES TO PRIVILEGED DOCUMENTS, FILED JANUARY 4, 2007 .....	705
MOTION TO STRIKE SARMC'S MOTION TO STRIKE REFERENCES TO PRIVILEGED DOCUMENTS, FILED JANUARY 9, 2007 .....	744
REPLY IN SUPPORT OF MOTION TO AMEND TO SEEK PUNITIVE DAMAGES AGAINST SARMC, FILED JANUARY 9, 2007 .....	747
REPLY IN SUPPORT OF MOTION TO AMEND TO SEEK PUNITIVE DAMAGES AGAINST GSR/SARG, FILED JANUARY 9, 2007 .....	768
OPPOSITION TO MOTION TO STRIKE REFERENCES TO PRIVILEGED DOCUMENTS, FILED JANUARY 10, 2007 .....	781

## VOLUME V

SAINT ALPHONSUS' REPLY TO MRJA'S MEMORANDUM IN OPPOSITION TO SARMC'S MOTION TO STRIKE AFFIDAVIT OF PROFESSOR DOUGLAS M. BRANSON, FILED JANUARY 10, 2007 .....	802
STIPULATED PROTECTIVE ORDER, FILED JANUARY 23, 2007 .....	810
MOTION FOR LEAVE TO SUPPLEMENT BRIEFING ON MOTION FOR LEAVE TO FILE SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT, FILED FEBRUARY 1, 2007 .....	822
MEMORANDUM DECISION ON MRI ASSOCIATES' MOTION TO AMEND THE COUNTERCLAIM AND THIRD PARTY COMPLAINT TO SEEK PUNITIVE DAMAGES AND TO FILE A SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT; SAINT ALPHONSUS' MOTION TO STRIKE REFERENCES TO PRIVILEGED DOCUMENTS AND SAINT ALPHONSUS' MOTION TO STRIKE AFFIDAVIT OF PROFESSOR DOUGLAS M. BRANSON, FILED FEBRUARY 6, 2007 .....	843
NOTICE OF WITHDRAWAL OF THIRD PARTY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, FILED FEBRUARY 12, 2007 .....	873



TABLE OF CONTENTS.....	PAGE NO.
OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT RE: LEASE TERM, FILED FEBRUARY 13, 2007 .....	876
SAINT ALPHONSUS' REPLY TO MRIA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT RE: LEASE TERM, FILED FEBRUARY 20, 2007 .....	890
ORDER ON MRI ASSOCIATES, LLP'S MOTION FOR LEAVE TO FILE SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT, FILED MARCH 2, 2007 .....	901
SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT, FILED MARCH 2, 2007 .....	905
THIRD PARTY DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MRIA ON BREACH OF FIDUCIARY DUTY CLAIM, FILED MARCH 7, 2007 .....	947
MEMORANDUM DECISION ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: LEASE TERM, FILED MARCH 9, 2007 .....	962
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S ANSWER TO SECOND AMENDED COUNTERCLAIM, FILED MARCH 22, 2007 .....	972
THIRD PARTY DEFENDANTS' ANSWER TO FIRST AMENDED THIRD PARTY COMPLAINT, FILED MARCH 22, 2007 .....	996

## VOLUME VI

THIRD PARTY DEFENDANTS' ANSWER TO FIRST AMENDED THIRD PARTY COMPLAINT, FILED MARCH 22, 2007 .....	1001
MOTION IN LIMINE RE: DOUGLAS M. BRANSON, FILED MARCH 23, 2007 .....	1021
OPPOSITION TO THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED APRIL 3, 2007 .....	1025
THIRD PARTY DEFENDANTS' RESPONSE TO MRIA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON BREACH OF FIDUCIARY DUTY CLAIM, FILED APRIL 10, 2007 .....	1049

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE FOURTH CLAIM FOR RELIEF IN SECOND AMENDED COUNTERCLAIM, FILED APRIL 13, 2007 .....	1063
THIRD PARTY DEFENDANTS' EXPERT WITNESS DISCLOSURE PURSUANT TO RULE 26(b)(4)(A)(i) OF THE IDAHO RULES OF CIVIL PROCEDURE, FILED APRIL 23, 2007 .....	1067
SAINT ALPHONSUS' OBJECTION TO MRI ASSOCIATES' EXPERT WITNESS DISCLOSURES FOR CHARLES A. WILHOITE AND BRUCE P. BUDGE, FILED APRIL 26, 2007 .....	1161
THIRD PARTY DEFENDANTS' MOTION TO EXCLUDE EXPERT WITNESSES, FILED APRIL 26, 2007 .....	1172
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEFAMATION CAUSE OF ACTION, FILED APRIL 26, 2007 .....	1180
MRIA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: MR. DOUGLAS M. BRANSON, FILED MAY 1, 2007 .....	1183
SAINT ALPHONSUS' MOTION FOR PROTECTIVE ORDER REGARDING DISCOVERY DEPOSITIONS OF GRANT CHAMBERLAIN AND CINDY SCHAMP, FILED MAY 2, 2007 .....	1197

## VOLUME VII

SAINT ALPHONSUS' JOINDER IN THIRD PARTY DEFENDANTS' MOTION TO EXCLUDE EXPERT WITNESSES, FILED MAY 3, 2007 .....	1201
SAINT ALPHONSUS' REPLY TO MRJA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: DOUGLAS M. BRANSON, FILED MAY 3, 2007 .....	1205
SAINT ALPHONSUS' OBJECTION TO THE EXPERT WITNESS DISCLOSURE OF W. ED WHITELAW / ECONORTHWEST DATED MARCH 19, 2007, FILED MAY 4, 2007 .....	1215
NOTICE OF HEARING, FILED MAY 4, 2007 .....	1219

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON MISAPPROPRIATION OF TRADE SECRET CONFIDENTIAL INFORMATION CAUSE OF ACTION, FILED MAY 8, 2007.....	1222
THIRD PARTY DEFENDANTS' JOINDER IN SAINT ALPHONSUS' OBJECTION TO THE EXPERT WITNESS DISCLOSURE OF W. ED WHITELAW/ECONORTHWEST DATED MARCH 19, 2007, FILED MAY 8, 2007.....	1225
NOTICE OF HEARING ON THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON MISAPPROPRIATION OF TRADE SECRET CONFIDENTIAL INFORMATION CAUSE OF ACTION, FILED MAY 8, 2007 .....	1228
THIRD PARTY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DISMISSING MRJA'S FIRST AMENDED THIRD PARTY COMPLAINT ON THE BASIS THAT NO DAMAGES HAVE BEEN PROVEN, FILED MAY 11, 2007.....	1231
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON IDAHO CONSUMER PROTECTION ACT CAUSE OF ACTION, FILED MAY 11, 2007 .....	1234
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE "INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONSHIP" CLAIM, FILED MAY 14, 2007.....	1237
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP CAUSE OF ACTION, FILED MAY 14, 2007.....	1240
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION, FILED MAY 14, 2007 .....	1243
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DAMAGE CAUSATION OR, IN THE ALTERNATIVE, MOTION IN LIMINE, FILED MAY 16, 2007 .....	1246
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DAMAGE CAUSATION OR, IN THE ALTERNATIVE, MOTION IN LIMINE, FILED MAY 16, 2007 .....	1250

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON MRI ASSOCIATES, LLP'S ANTITRUST CLAIMS, FILED MAY 17, 2007.....	1255
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR SUMMARY JUDGMENT ON MRI ASSOCIATES, LLP'S ANTITRUST CLAIMS, FILED MAY 17, 2007.....	1265
THIRD PARTY DEFENDANTS' JOINDER IN SAINT ALPHONSUS REGIONAL MEDICAL CENTER'S MOTION FOR SUMMARY JUDGMENT ON MRI ASSOCIATES, LLP'S ANTITRUST CLAIMS, FILED MAY 18, 2007.....	1269
SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION (MRIA'S SIXTEENTH CLAIM FOR RELIEF), FILED MAY 18, 2007.....	1273
STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION (MRIA'S SIXTEENTH CLAIM FOR RELIEF), FILED MAY 18, 2007.....	1277
SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON MISAPPROPRIATION OF TRADE SECRET CONFIDENTIAL INFORMATION CAUSE OF ACTION (MRIA'S SEVENTEENTH, EIGHTEENTH AND NINETEENTH CLAIMS FOR RELIEF), FILED MAY 18, 2007.....	1282
STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON MISAPPROPRIATION OF TRADE SECRET CONFIDENTIAL INFORMATION CAUSE OF ACTION (MRIA'S SEVENTEENTH, EIGHTEENTH AND NINETEENTH CLAIMS FOR RELIEF), FILED MAY 18, 2007.....	1286
SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP OR BUSINESS EXPECTATIONS (MRIA'S SEVENTH CLAIM FOR RELIEF), FILED MAY 18, 2007.....	1292
STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP OR BUSINESS EXPECTATIONS (MRIA'S SEVENTH CLAIM FOR RELIEF) FILED MAY 18, 2007.....	1296

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
OBJECTION TO AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION OF SAINT ALPHONSUS REGIONAL MEDICAL CENTER, FILED MAY 18, 2007 .....	1301
MEMORANDUM DECISION ON THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MRJA ON BREACH OF FIDUCIARY DUTY CLAIM, FILED MAY 21, 2007 .....	1306
MEMORANDUM DECISION ON SAINT ALPHONSUS' MOTION IN LIMINE RE: DOUGLAS M. BRANSON, FILED MAY 21, 2007 .....	1317
SAINT ALPHONSUS' MOTION TO DISMISS MRJA'S TWENTIETH CLAIM FOR RELIEF (RE: SPOILIATION), FILED MAY 21, 2007 .....	1324
OPPOSITION TO SARMC'S OBJECTION TO EXPERT WITNESS DISCLOSURE OF ED WHITELAW, FILED MAY 22, 2007 .....	1328
OPPOSITION TO SARMC'S MOTION TO EXCLUDE EXPERT WITNESSES, FILED MAY 22, 2007 .....	1356
OPPOSITION TO THIRD PARTY DEFENDANTS' MOTION TO EXCLUDE EXPERT WITNESSES, FILED MAY 22, 2007 .....	1373
MRJA'S OPPOSITION TO SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE FOURTH CLAIM FOR RELIEF IN SECOND AMENDED COUNTERCLAIM, FILED MAY 22, 2007 .....	1390

## VOLUME VIII

NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO I.R.C.P. 41(A)(1), FILED MAY 22, 2007 .....	1408
MRJA'S SUPPLEMENTAL DISCLOSURE OF WITNESSES PURSUANT TO AGREEMENT OF PARTIES, FILED MAY 23, 2007.....	1412
ERRATA SHEET RE: MRJA'S OPPOSITION TO SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE FOURTH CLAIM FOR RELIEF IN SECOND AMENDED COUNTERCLAIM, FILED MAY 23, 2007 .....	1416
REPORT OF DISCOVERY MASTER RE: ST.ALPHONSUS DIVERSIFIED CARE, INC., AND ST. ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR PROTECTIVE ORDER RE: MRJA ASSOCIATES, LLP, RULE 30(b)(6) DEPOSITION, FILED MAY 24, 2007 .....	1423

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
SAINT ALPHONSUS' REPLY TO MRJA'S OPPOSITION TO SARMC'S OBJECTION TO EXPERT WITNESS DISCLOSURE OF ED WHITELAW, FILED MAY 24, 2007 .....	1430
PLAINTIFF/COUNTERDEFENDANTS, SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S SUPPLEMENTAL DISCLOSURE OF LAY WITNESSES, FILED JUNE 1, 2007.....	1435
MEMORANDUM DECISION ON SAINT ALPHONSUS' OBJECTION TO MRI ASSOCIATES' EXPERT WITNESS DISCLOSURES FOR CHARLES A. WILHOITE AND BRUCE P. BUDGE AND THIRD-PARTY DEFENDANTS' MOTION TO EXCLUDE EXPERT WITNESSES, FILED JUNE 5, 2007.....	1439
THIRD PARTY DEFENDANTS' JOINDER IN SAINT ALPHONSUS' OBJECTION TO THE EXPERT WITNESS DISCLOSURE OF W. ED WHITELAW/ECONORTHWEST DATED MARCH 19, 2007, FILED JUNE 5, 2007 .....	1450
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 5, 2007 .....	1453
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RENEWED MOTION IN LIMINE RE: LEASE AND PARTNERSHIP TERM, FILED JUNE 5, 2007 .....	1458
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY, FILED JUNE 5, 2007.....	1462
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: DISSOCIATION, FILED JUNE 5, 2007.....	1467
MRJA'S MOTION IN LIMINE PROHIBITING SARMC FROM INTRODUCING EVIDENCE OF ITS INTENT RE TERM OF THE MRJA PARTNERSHIP, FILED JUNE 5, 2007.....	1474
MRJA'S MOTION IN LIMINE RE: ATTEMPTS TO PURCHASE MRJA AND/OR MRICI, FILED JUNE 5, 2007 .....	1478
MRJA'S MOTION IN LIMINIE RE: COMMUNICATIONS BETWEEN SARMC AND MRJA ABOUT THE PURCHASE OF MRJA AND/OR MRICI, FILED JUNE 5, 2007 .....	1482

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
MRIA’S MOTION IN LIMINE RE: JUSTIFICATION FOR WITHDRAWAL, FILED JUNE 5, 2007.....	1486
MRIA’S MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 5, 2007 .....	1491
MRIA’S MOTION IN LIMINE RE: SARMC PROMOTION OF ITS OWN BEST INTERESTS AS A DEFENSE TO IT FIDUCIARY DUTY BREACHES, FILED JUNE 5, 2007.....	1495
MRIA’S MOTION IN LIMINE RE: PURPORTED BREACHES BY MRIA OF FIDUCIARY DUTIES, FILED JUNE 5, 2007 .....	1499
MOTION IN LIMINE RE: EVIDENCE OF PATRICIA VANDENBERG’S STATUS AS A FORMER CATHOLIC NUN, FILED JUNE 5, 2007 .....	1503
MRIA’S MOTION IN LIMINE RE: SARMC’S BELIEFS ABOUT LEGALITY OF WITHDRAWAL FROM MRIA, FILED JUNE 5, 2007.....	1507
MRIA’S MOTION IN LIMINE RE: REFERRING PHYSICIANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES, FILED JUNE 5, 2007.....	1511
MRIA’S MOTION IN LIMINE RE: SARMC’S RELIANCE ON ADVICE OF COUNSEL, FILED JUNE 5, 2007 .....	1514
MRIA’S MOTION IN LIMINE RE: INADVERTENTLY DISCLOSED PRIVILEGED DOCUMENT, FILED JUNE 5, 2007.....	1518
MRIA’S MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS OF DMR, FILED JUNE 5, 2007.....	1521
MRIA’S MOTION TO STRIKE IMI’S JOINDER IN SARMC’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LACK OF PROOF OF DAMAGES CAUSATION, FILED JUNE 5, 2007 .....	1525
MRIA’S OPPOSITION TO SARMC’S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DAMAGE CAUSATION OR, IN THE ALTERNATIVE, MOTION IN LIMINE, FILED JUNE 5, 2007 .....	1529
MRIA’S OPPOSITION TO IMI’S MOTION FOR SUMMARY JUDGMENT DISMISSING MRIA’S FIRST AMENDED THIRD PARTY COMPLAINT ON THE BASIS THAT NO DAMAGES HAVE BEEN PROVEN AND SARMC’S JOINDER THERETO, FILED JUNE 5, 2007 .....	1557

**TABLE OF CONTENTS.....PAGE NO.**

MRIA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT BY THIRD PARTY DEFENDANTS ON THE "INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONSHIP" CLAIM, FILED JUNE 5, 2007 .....	1564
MRIA'S OPPOSITION TO THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION AND SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION (MRIA'S SIXTEENTH CLAIM FOR RELIEF), FILED JUNE 5, 2007 .....	1586

**VOLUME IX**

THIRD PARTY DEFENDANTS' NOTICE ON NON-OPPOSITION TO MRJA'S VOLUNTARY DISMISSAL OF CLAIMS, FILED JUNE 5, 2007 .....	1605
MRJA'S MOTION TO STRIKE GREGORY S. VISTNESS, FILED JUNE 5, 2007 .....	1608
MRJA'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: ANTITRUST CLAIMS, FILED JUNE 5, 2007 .....	1611
STATEMENT OF FACTS IN SUPPORT MRJA'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: ANTITRUST CLAIMS, FILED JUNE 5, 2007 .....	1638
MRJA'S OPPOSITION TO SARMC'S MOTION TO DISMISS SPOILIATION CLAIM, FILED JUNE 12, 2007 .....	1652
MRJA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: DISSOCIATION, FILED JUNE 12, 2007 .....	1663
MRJA'S OPPOSITION TO SARMC'S RENEWED MOTION IN LIMINE RE: LEASE AND PARTNERSHIP TERM, FILED JUNE 12, 2007 .....	1677
MRJA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY, FILED JUNE 12, 2007 .....	1686
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: SARMC'S RELIANCE ON ADVICE OF COUNSEL, FILED JUNE 12, 2007 .....	1702
REPORT OF DISCOVERY MASTER RE: MOTION TO COMPEL RESPONSES TO FIFTH SET OF INTERROGATORIES AND FOURTH SET OF REQUESTS FOR ADMISSION, FILED JUNE 12, 2007 .....	1709



<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRIA'S MOTION IN LIMINE RE: SARMC'S BELIEFS ABOUT LEGALITY OF WITHDRAWAL FROM MRIA, FILED JUNE 12, 2007 .....	1716
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRIA'S MOTION IN LIMINE RE: SARMC PROMOTION OF ITS OWN BEST INTERESTS AS A DEFENSE TO ITS FIDUCIARY DUTY BREACHES, FILED JUNE 12, 2007.....	1723
THIRD PARTY DEFENDANTS' RESPONSE TO MRIA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION, FILED JUNE 12, 2007 .....	1732
THIRD PARTY DEFENDANTS' OPPOSITION TO MRIA'S MOTION IN LIMINE RE INVESTMENTS BY MEMBERS OF DMR, FILED JUNE 12, 2007 .....	1739
THIRD PARTY DEFENDANTS' RESPONSE TO MRIA'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE ANTITRUST CLAIMS, FILED JUNE 12, 2007.....	1743
THIRD PARTY DEFENDANTS' REPLY TO MIRA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT BY THIRD PARTY DEFENDANTS ON "INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONSHIP" CLAIM, FILED JUNE 12, 2007 .....	1747
THIRD PARTY DEFENDANTS' RESPONSE TO MIRA'S MOTION TO STRIKE IMI'S JOINER IN SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LACK OF PROOF OF DAMAGES CAUSATION, FILED JUNE 12, 2007 .....	1760
THIRD PARTY DEFENDANTS' RESPONSE TO MRIA'S OPPOSITION TO SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE DAMAGES CAUSATION, FILED JUNE 12, 2007 .....	1764
THIRD PARTY DEFENDANTS' OBJECTION TO MRIA'S MOTION IN LIMINE RE REFERRING PHYSICIANS DESIGNATED BY SARMC/GSR AS EXPERT WITNESSES, FILED JUNE 12, 2007 .....	1771
THIRD PARTY DEFENDANTS' OBJECTION TO MRIA'S MOTION IN LIMINE RE ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 12, 2007.....	1776

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
THIRD PARTY DEFENDANTS' REPLY TO MRJA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT BY THIRD PARTY DEFENDANTS DISMISSING MRJA'S FIRST AMENDED THIRD PARTY COMPLAINT ON THE BASIS THAT NO DAMAGES HAVE BEEN PROVEN, FILED JUNE 12, 2007 .....	1780
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: JUSTIFICATION FOR WITHDRAWAL, FILED JUNE 12, 2007.....	1785
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: REFERRING PHYSICANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES, FILED JUNE 12, 2007 .....	1791
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 12, 2007.....	1797

## VOLUME X

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: PURPORTED BREACHES BY MRJA OF FIDUCIARY DUTIES, FILED JUNE 12, 2007.....	1807
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: EVIDENCE OF PATRICIA VANDENBERG'S STATUS AS A FORMER CATHOLIC NUN, FILED JUNE 12, 2007.....	1816
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S JOINDER IN THIRD PARTY DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT RE: CIVIL CONSPIRACY CAUSE OF ACTION, FILED JUNE 12, 2007.....	1823
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: ATTEMPTS TO PURCHASE MRJA AND/OR MRICI, FILED JUNE 12, 2007 .....	1828

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS ON DMR, FILED JUNE 12, 2007 .....	1835
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: COMMUNICATIONS BETWEEN SARMC AND MRJA ABOUT THE PURCHASE OF MRJA AND/OR MRICI, FILED JUNE 12, 2007 .....	1841
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: TERM OF THE MRJA PARTNERSHIP, FILED JUNE 12, 2007 .....	1848
MRJA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 12, 2007 .....	1861
MEMORANDUM DECISION ON SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS MEDICAL CENTER, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE FOURTH CLAIM FOR RELIEF IN SECOND AMENDED COUNTERCLAIM, FILED JUNE 13, 2007 .....	1870
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION TO DISMISS SPOILIATION CLAIM, FILED JUNE 14, 2007 .....	1882
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION IN LIMINE RE: DISSOCIATION, FILED JUNE 14, 2007 .....	1896
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION IN LIMINE RE: SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 14, 2007 .....	1908
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION IN LIMINE RE: LEASE AND PARTNERSHIP TERM, FILED JUNE 14, 2007 .....	1914
MRJA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: INADVERTENTLY DISCLOSED PRIVILEGED DOCUMENT, FILED JUNE 15, 2007 .....	1921
MRJA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS OF DMR, FILED JUNE 15, 2007 .....	1928

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 15, 2007 .....	1935
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE RE: SARMC’S BELIEFS ABOUT LEGALITY OF WITHDRAWAL FROM MRIA, FILED JUNE 15, 2007.....	1942
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE RE: COMMUNICATIONS BETWEEN SARMC AND MRIA ABOUT THE PURCHASE OF MRIA AND/OR MRICI AND IN SUPPORT OF MRIA’S MOTION IN LIMINE RE: ATTEMPTS TO PURCHASE MRIA AND/OR MRICI, FILED JUNE 15, 2007 .....	1948
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE RE: REFERRING PHYSICIANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES, FILED JUNE 15, 2007.....	1953
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE PROHIBITING SARMC FROM INTRODUCING EVIDENCE OF ITS INTENT RE TERM OF THE MRIA PARTNERSHIP, FILED JUNE 15, 2007.....	1958
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE RE: PURPORTED BREACHES BY MRIA OF FIDUCIARY DUTIES, FILED JUNE 15, 2007 .....	1962
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE RE: JUSTIFICATION FOR WITHDRAWAL, FILED JUNE 15, 2007 .....	1968
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE RE SARMC’S RELIANCE ON ADVICE OF COUNSEL, FILED JUNE 15, 2007.....	1973
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE RE: SARMC PROMOTION OF ITS OWN BEST INTERESTS AS A DEFENSE TO IT FIDUCIARY DUTY BREACHES, FILED JUNE 15, 2007 .....	1979
MRIA’S REPLY IN SUPPORT OF MOTION IN LIMINE RE: EVIDENCE OF PATRICIA VANDENBERG’S STATUS AS A FORMER CATHOLIC NUN, FILED JUNE 15, 2007.....	1985
MRIA’S MOTION TO STRIKE SUPPLEMENTAL AFFIDAVIT OF GREGORY S. VISTNES, PH.D., FILED JUNE 15, 2007 .....	1989
MRIA’S REPLY IN SUPPORT OF MOTION TO STRIKE GREGORY S. VISTNES, FILED JUNE 15, 2007.....	1992

**TABLE OF CONTENTS.....PAGE NO.**

**VOLUME XI**

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION TO STRIKE THE AFFIDAVIT OF CHARLES WILHOITE IN OPPOSITION TO SARMC'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY, FILED JUNE 18, 2007 .....	2004
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: REFERRING PHYSICIANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES, FILED JUNE 19, 2007 .....	2008
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 19, 2007 .....	2013
MRIA'S RESPONSE TO THIRD PARTY DEFENDANTS' OBJECTION TO MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS OF DMR, FILED JUNE 19, 2007 .....	2017
THIRD PARTY DEFENDANTS' RESPONSE/OBJECTION TO MRJA'S ERRONEOUS STATEMENT REGARDING UNTIMELINESS OF THIRD PARTY DEFENDANTS' PLEADINGS, FILED JUNE 20, 2007 .....	2023
ERRATA SHEET RE: SUPPLEMENTAL AFFIDAVIT OF GREGORY S. VISTNES, PH.D, FILED JUNE 22, 2007 .....	2027
MRIA'S OPPOSITION TO SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: "INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP" CLAIM, FILED JUNE 22, 2007 .....	2032A
OPPOSITION TO SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION TO STRIKE THE AFFIDAVIT OF CHARLES WILHOITE IN OPPOSITION TO SARMC'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY, FILED JUNE 25, 2007 .....	2033
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT RE: INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP CLAIM, FILED JUNE 27, 2007 .....	2040
ORDER ON ORAL ARGUMENT PRESENTATION ON MOTION FOR JULY 2 <sup>ND</sup> 2007, FILED JUNE 28, 2007 .....	2050

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
MRIA'S MOTION IN LIMINE RE: YVONNE KETCHUM AFFIDAVIT, FILED JULY 11, 2007.....	2055
MRIA'S MOTION TO STRIKE AFFIDAVIT OF YVONNE KETCHUM, FILED JULY 11, 2007.....	2059
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S WITNESS LIST, FILED JULY 12, 2007 .....	2063
MEMORANDUM DECISION ON 1) SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DAMAGE CAUSATION OR, IN THE ALTERNATIVE, MOTION IN LIMINE 2) SAINT ALPHONSUS' MOTION FOR SUMMARY JUDGMENT ON MRJA'S ANTITRUST CLAIMS 3) SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION (MRJA'S SIXTEENTH CLAIM FOR RELIEF) 4) SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP OR BUSINESS EXPECTATIONS (MRJA'S SEVENTH CLAIM FOR RELIEF) 5) SAINT ALPHONSUS' MOTION TO DISMISS MRJA'S TWENTIETH CLAIM FOR RELIEF (RE: SPOILIATION), FILED JULY 13, 2007 .....	2069
MRIA'S MOTION IN LIMINE RE: THIRD PARTY DEFENDANT SETTLEMENT, FILED JULY 18, 2007.....	2091
MRIA'S MOTION IN LIMINE RE: PURPORTED BREACHES OF FIDUCIARY DUTIES AND WRONGFUL CONDUCT BY MRJA, DMR, AND DR. GILES, FILED JULY 18, 2007.....	2095
MRIA'S MOTION IN LIMINE RE: THIRD PARTY DEFENDANTS' EXPERT WITNESSES, FILED JULY 18, 2007 .....	2099
STIPULATION FOR DISMISSAL OF THIRD PARTY DEFENDANTS WITH PREJUDICE; FILED JULY 20, 2007 .....	2103
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION TO COMPEL PRODUCTION OF DISCOVERY, FILED JULY 25, 2007 .....	2107
MEMORANDUM DECISION ON SAINT ALPHONSUS' MOTION IN LIMINE RE: SHATTUCK HAMMOND MEMORANDUM; SAINT ALPHONSUS' RENEWED MOTION IN LIMINE RE: LEASE AND PARTNERSHIP TERM; SAINT ALPHONSUS' MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY; SAINT ALPHONSUS' MOTION IN LIMINE RE: DISSOCIATION; MRJA'S MOTION IN LIMINE PROHIBITING SARMC FROM INTRODUCING EVIDENCE	

**TABLE OF CONTENTS.....PAGE NO.**

OF ITS INTENT RE: TERM OF THE MRIA PARTNERSHIP; MRIA'S MOTION IN LIMINE RE: ATTEMPTS TO PURCHASE MRIA AND/OR MRICI; MRIA'S MOTION IN LIMINE RE: COMMUNICATIONS BETWEEN SARMC AND MRIA ABOUT THE PURCHASE OF MRIA AND/OR MRICI; MRIA'S MOTION IN LIMINE RE: JUSTIFICATION FOR WITHDRAWAL; MRIA'S MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK MEMORANDUM; MRIA'S MOTION IN LIMINE RE: SARMC'S PROMOTION OF ITS OWN BEST INTERESTS; MRIA'S MOTION IN LIMINE RE: PURPORTED BREACHES BY MRIA OF FIDUCIARY DUTIES; MRIA'S MOTION IN LIMINE RE: EVIDENCE OF PATRICIA VANDEBERG'S STATUS AS A FORMER CATHOLIC NUN; MRIA'S MOTION IN LIMINE RE: SARMC'S BELIEFS ABOUT LEGALITY OF WITHDRAWAL FROM MRIA; MRIA'S MOTION TO STRIKE GREGORY S. VISTNESS; MRIA'S MOTION IN LIMINE RE: REFERRING PHYSICIANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES; MRIA'S MOTION IN LIMINE RE: SARMC'S RELIANCE ON ADVICE OF COUNSEL; MRIA'S MOTION IN LIMINE RE: INADVERTENTLY DISCLOSED PRIVILEGED DOCUMENTS; MRIA'S MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS OF DMR; SAINT ALPHONSUS' MOTION TO STRIKE THE AFFIDAVIT OF CHARLES WILHOITE IN OPPOSITION TO SARMC'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY; MOTION TO STRIKE SUPPLEMENTAL AFFIDAVIT OF GREGORY S. VISTNESS, PHD., FILED JULY 30, 2007 .....	2111
ORDER FOR DISMISSAL OF THIRD PARTY DEFENDANTS WITH PREJUDICE, FILED JULY 30, 2007 .....	2143
REQUEST FOR CLARIFICATION, FILED JULY 31, 2007 .....	2146
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: USE OF SHATTUCK HAMMOND DOCUMENTS IN OPENING STATEMENTS, FILED AUGUST 3, 2007 .....	2152
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: USE OF DEPOSITION TESTIMONY IN OPENING STATEMENTS, FILED AUGUST 3, 2007 .....	2157
MEMORANDUM DECISION ON MRIA'S REQUEST FOR CLARIFICATION/RECONSIDERATION OF MOTION IN LIMINE RE: SHATTUCK HAMMOND MEMORANDUM AND MRIA'S REQUEST FOR PREEVIDENTIARY JURY INSTRUCTION RE: DUTY OF LOYALTY, FILED AUGUST 3, 2007 .....	2161

**TABLE OF CONTENTS.....PAGE NO.**

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S OPPOSITION TO MRJA'S MOTION TO COMPEL RE: SARMC'S FAILURE TO PROVIDE FOUNDATIONAL OBJECTIONS TO MRJA'S EXHIBITS, FILED AUGUST 6, 2007 .....	2167
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION IN LIMINE RE: USE OF SHATTUCK HAMMOND DOCUMENTS IN OPENING STATEMENTS, FILED AUGUST 6, 2007 .....	2171

**VOLUME XII**

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION IN LIMINE RE: USE OF SHATTUCK HAMMOND DOCUMENTS IN OPENING STATEMENTS, FILED AUGUST 6, 2007 (Continued).....	2201
MRJA'S OPPOSITION TO MOTION IN LIMINE RE: USE OF SHATTACK HAMMOND DOCUMENTS IN OPENING STATEMENTS, FILED AUGUST 6, 2007 .....	2226
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: DISSOCIATION DAMAGES, FILED AUGUST 10, 2007 .....	2231
MRJA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: DISSOCIATION DAMAGES, FILED AUGUST 14, 2007 .....	2235
MRJA'S MOTION AND MEMORANDUM IN SUPPORT OF ADMISSIBILITY OF CARL HARDER LETTER, FILED AUGUST 16, 2007 .....	2243
MRJA'S MOTION IN LIMINE PROHIBITING SARMC FROM REFERRING TO ITS DISSOCIATION FROM THE MRJA PARTNERSHIP AS "LAWFUL" OR "NOT UNLAWFUL", FILED AUGUST 20, 2007 .....	2274
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE PROHIBITING SARMC FROM REFERRING TO ITS DISSOCIATION FROM THE MRJA PARTNERSHIP AS "LAWFUL" OR "NOT UNLAWFUL", FILED AUGUST 22, 2007 .....	2277
MRJA'S RESPONSE TO STATUTE OF LIMITATIONS ARGUMENT, FILED AUGUST 27, 2007 .....	2283



<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
MRIA’S MOTION IN LIMINE RE: GRANT CHAMBERLAIN TESTIMONY AND SUPPORTING MEMORANDUM, FILED AUGUST 28, 2007 .....	2289
SPECIAL VERDICT, FILED AUGUST 30, 2007 .....	2293
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.’S OBJECTION TO MRJA’S PROPOSED JUDGMENT, FILED SEPTEMBER 4, 2007 .....	2298
MRIA’S RESPONSE TO SAINT ALPHONSUS DIVERSIFIED CARE, INC. AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER’S OBJECTION TO MRJA’S PROPOSED JUDGMENT, FILED SEPTEMBER 10, 2007 .....	2302
FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT, FILED SEPTEMBER 21, 2007 .....	2306
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.’S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR NEW TRIAL, FILED OCTOBER 3, 2007 .....	2314
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.’S MOTION TO ENLARGE PAGE LIMIT, FILED OCTOBER 3, 2007 .....	2318
SAINT ALPHONSUS’S APPLICATION FOR ATTORNEY FEES RELATIVE TO ANTITRUST AND EQUITY CLAIMS, FILED OCTOBER 9, 2007 .....	2321
MRIA’S MOTION FOR RECONSIDERATION OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT, FILED OCTOBER 9, 2007 .....	2325
MOTION FOR COSTS AND FEES PURSUANT TO IRCP 54, FILED OCTOBER 9, 2007 .....	2328
MRIA’S MOTION FOR PREJUDGMENT INTEREST, FILED OCTOBER 9, 2007 .....	2331
MRIA’S OBJECTION TO VERIFIED MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED OCTOBER 22, 2007 .....	2334
MOTION TO DISALLOW MRJA’S REQUEST FOR COSTS AND ATTORNEY FEES, FILED OCTOBER 23, 2007 .....	2343
MRIA’S OPPOSITION TO MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR NEW TRIAL, FILED OCTOBER 24, 2007 .....	2346

**TABLE OF CONTENTS.....PAGE NO.**

MRIA'S VERIFIED REPLY IN SUPPORT OF MOTION FOR COSTS AND FEES, FILED  
OCTOBER 26, 2007 .....2396

**VOLUME XIII**

REPLY IN SUPPORT OF MOTION FOR PREJUDGMENT INTEREST, FILED  
OCTOBER 26, 2007 .....2409

REPLY IN SUPPORT OF MOTIONS FOR RECONSIDERATION OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND JUDGMENT, FILED OCTOBER 26, 2007 .....2416

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S MOTION TO ENLARGE PAGE LIMIT, FILED  
OCTOBER 29, 2007 .....2420

ORDER RE: SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS  
REGIONAL MEDICAL CENTER, INC.'S MOTION TO ENLARGE PAGE LIMIT,  
FILED OCTOBER 30, 2007.....2423

MEMORANDUM DECISION ON SAINT ALPHONSUS'S APPLICATION FOR  
ATTORNEY FEES RELATIVE TO ANTITRUST AND EQUITY CLAIMS; SAINT  
ALPHONSUS'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT;  
SAINT ALPHONSUS'S MOTION FOR NEW TRIAL; MRJA'S MOTION FOR  
PREJUDGMENT INTEREST; MRJA'S MOTION FOR RECONSIDERATION;  
MRJA'S MOTION FOR ATTORNEY FEES AND COSTS, FILED  
NOVEMBER 19, 2007 .....2426

ACCEPTANCE OF REMITTITUR, FILED DECEMBER 10, 2007 .....2454

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S OBJECTION TO ACCEPTANCE OF REMITTITUR,  
FILED DECEMBER 20, 2007 .....2457

OBJECTION TO MRJA'S REVISED FEES AND COSTS, FILED  
DECEMBER 21, 2007 .....2460

NOTICE OF APPEAL, FILED DECEMBER 27, 2007.....2463

AMENDED JUDGMENT, FILED JANUARY 3, 2008 .....2496

RESPONSE TO OBJECTION TO ACCEPTANCE OF REMITTITUR, FILED  
JANUARY 3, 2008 .....2500

<b>TABLE OF CONTENTS.....</b>	<b>PAGE NO.</b>
REQUEST FOR ADDITIONAL TRANSCRIPTS AND RECORDS, FILED JANUARY 10, 2008 .....	2504
NOTICE OF CROSS-APPEAL, FILED JANUARY 17, 2008.....	2510
MEMORANDUM DECISION ON MRJA'S REVISED MOTION FOR ATTORNEYS FEES AND COSTS, FILED JANUARY 28, 2008 .....	2518
REQUEST FOR ADDITIONAL CLERK'S RECORD, FILED JANUARY 30, 2008 .....	2522
SUPPLEMENTAL REQUEST FOR ADDITIONAL CLERK'S RECORDS, FILED FEBRUARY 5, 2008 .....	2526
SUPPLEMENTAL REQUEST FOR ADDITIONAL CLERK'S RECORD, FILED FEBRUARY 11, 2008 .....	2530
SECOND AMENDED JUDGMENT, FILED FEBRUARY 26, 2008 .....	2533
MRJA'S SECOND SUPPLEMENTAL REQUEST FOR ADDITIONAL CLERK'S RECORDS, FILED FEBRUARY 27, 2008 .....	2536
MRJA'S THIRD SUPPLEMENTAL REQUEST FOR ADDITIONAL CLERK'S RECORDS, FILED APRIL 7, 2008.....	2540
REQUEST FOR ADDITIONAL TRANSCRIPTS, FILED APRIL 25, 2008 .....	2543
CERTIFICATE OF EXHIBITS.....	2546
CERTIFICATE OF SERVICE .....	2609
CERTIFICATE TO RECORD .....	2610
OBJECTION TO CLERK'S RECORD ON APPEAL AND REQUEST FOR ADDITIONAL ITEMS, FILED JULY 14, 2008 .....	2611
OBJECTION TO REPORTER'S TRANSCRIPT ON APPEAL AND REQUEST FOR ADDITIONAL ITEMS, FILED JULY 17, 2008.....	2616
STIPULATION FOR CORRECTIONS AND ADDITIONS TO THE TRANSCRIPT AND RECORD, FILED JULY 31, 2008 .....	2622
ORDER FOR CORRECTIONS AND ADDITIONS TO THE TRANSCRIPT AND RECORD, FILED AUGUST 1, 2008 .....	2628

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

ACCEPTANCE OF REMITTITUR, FILED DECEMBER 10, 2007.....	2454
AMENDED JUDGMENT, FILED JANUARY 3, 2008.....	2496
AMENDED MEMORANDUM DECISION ON PLAINTIFF'S MOTIONS TO COMPEL; DEFENDANT'S MOTION TO EXTEND PRETRIAL DEADLINES; DEFENDANT'S MOTION FOR RECONSIDERATION; THIRD-PARTY DEFENDANT'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCE DOCUMENTS; THIRD-PARTY DEFENDANT'S MOTION TO STRIKE MRJA'S OBJECTION TO PRODUCING MOFFAT THOMAS DOCUMENTS, FILED DECEMBER 6, 2006.....	570
AMENDED SCHEDULING ORDER, FILED MARCH 20, 2006 .....	180
ANSWER TO COMPLAINT AND COUNTERCLAIM, FILED MAY 20, 2005 .....	63
ANSWER TO COUNTERCLAIM, FILED JUNE 24, 2005 .....	81
CERTIFICATE OF EXHIBITS.....	2546
CERTIFICATE OF SERVICE .....	2609
CERTIFICATE TO RECORD .....	2610
COMPLAINT AND DEMAND FOR JURY TRIAL, FILED OCTOBER 18, 2004 .....	55
ERRATA SHEET RE: AFFIDAVIT OF PROFESSOR DOUGLAS M. BRANSON, FILED DECEMBER 21, 2006.....	683
ERRATA SHEET RE: MRJA'S OPPOSITION TO SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE FOURTH CLAIM FOR RELIEF IN SECOND AMENDED COUNTERCLAIM, FILED MAY 23, 2007 .....	1416
ERRATA SHEET RE: SUPPLEMENTAL AFFIDAVIT OF GREGORY S. VISTNES, PH.D, FILED JUNE 22, 2007 .....	2027
FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT, FILED SEPTEMBER 21, 2007 .....	2306
FIRST AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT, FILED MARCH 7, 2006.....	141

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

MEMORANDUM DECISION AND ORDER TO RESET THE TRIAL DATES, FILED  
NOVEMBER 22, 2006 .....565

MEMORANDUM DECISION AND ORDER, FILED MAY 3, 2006.....332

MEMORANDUM DECISION ON 1) SAINT ALPHONSUS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT RE: DAMAGE CAUSATION OR, IN THE  
ALTERNATIVE, MOTION IN LIMINE 2) SAINT ALPHONSUS' MOTION FOR  
SUMMARY JUDGMENT ON MRJA'S ANTITRUST CLAIMS 3) SAINT  
ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL  
CONSPIRACY CAUSE OF ACTION (MRJA'S SIXTEENTH CLAIM FOR RELIEF)  
4) SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE:  
INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP OR  
BUSINESS EXPECTATIONS (MRJA'S SEVENTH CLAIM FOR RELIEF) 5) SAINT  
ALPHONSUS' MOTION TO DISMISS MRJA'S TWENTIETH CLAIM FOR RELIEF  
(RE: SPOILIATION), FILED JULY 13, 2007 .....2069

MEMORANDUM DECISION ON DEFENDANT/COUNTERCLAIMANT'S MOTION FOR  
LEAVE TO AMEND COUNTERCLAIM AND THIRD PARTY COMPLAINT, FILED  
MARCH 7, 2006.....130

MEMORANDUM DECISION ON DEFENDANT/COUNTERCLAIMANT'S MOTION TO  
COMPEL, FILED FEBRUARY 13, 2006.....112

MEMORANDUM DECISION ON DEFENDANT/COUNTERCLAIMANTS/THIRD-PARTY  
PLAINTIFF'S MOTION FOR CLARIFICATION, FILED DECEMBER 6, 2006 .....580

MEMORANDUM DECISION ON DEFENDANTS MOTION FOR RECONSIDERATION,  
OR, IN THE ALTERNATIVE, FOR PERMISSION TO APPEAL, FILED  
OCTOBER 23, 2006.....532

MEMORANDUM DECISION ON DEFENDANTS/COUNTERCLAIMANTS' MOTIONS TO  
COMPEL, MOTION TO QUASH SUBPOENAS AND MOTION FOR PROTECTIVE  
ORDER, FILED APRIL 17, 2006 .....291

MEMORANDUM DECISION ON MRI ASSOCIATES' MOTION TO AMEND THE  
COUNTERCLAIM AND THIRD PARTY COMPLAINT TO SEEK PUNITIVE  
DAMAGES AND TO FILE A SECOND AMENDED COUNTERCLAIM AND FIRST  
AMENDED THIRD-PARTY COMPLAINT; SAINT ALPHONSUS' MOTION TO  
STRIKE REFERENCES TO PRIVILEGED DOCUMENTS AND SAINT  
ALPHONSUS' MOTION TO STRIKE AFFIDAVIT OF PROFESSOR DOUGLAS M.  
BRANSON, FILED FEBRUARY 6, 2007 .....843

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

MEMORANDUM DECISION ON MRJA'S REQUEST FOR  
CLARIFICATION/RECONSIDERATION OF MOTION IN LIMINE RE: SHATTUCK  
HAMMOND MEMORANDUM AND MRJA'S REQUEST FOR PREEVIDENTIARY  
JURY INSTRUCTION RE: DUTY OF LOYALTY, FILED AUGUST 3, 2007 .....2161

MEMORANDUM DECISION ON MRJA'S REVISED MOTION FOR ATTORNEYS FEES  
AND COSTS, FILED JANUARY 28, 2008 .....2518

MEMORANDUM DECISION ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT RE: LEASE TERM, FILED MARCH 9, 2007 .....962

MEMORANDUM DECISION ON PLAINTIFF'S MOTIONS TO COMPEL; DEFENDANT'S  
MOTION TO EXTEND PRETRIAL DEADLINES; DEFENDANT'S MOTION FOR  
RECONSIDERATION; THIRD-PARTY DEFENDANT'S MOTION TO COMPEL  
ANSWERS TO INTERROGATORIES AND PRODUCE DOCUMENTS; THIRD-  
PARTY DEFENDANT'S MOTION TO STRIKE MRJA'S OBJECTION TO  
PRODUCING MOFFAT THOMAS DOCUMENTS, FILED  
NOVEMBER 2, 2006 .....549

MEMORANDUM DECISION ON PLAINTIFF'S MOTIONS TO STRIKE, CROSS-  
MOTIONS FOR SUMMARY JUDGMENT, AND PLAINTIFF/THIRD PARTY  
DEFENDANT'S MOTION TO DISMISS, FILED JULY 24, 2006.....384

MEMORANDUM DECISION ON PLAINTIFF'S/COUNTERDEFENDANTS' MOTION TO  
ESTABLISH ABSENCE OF GROUNDS FOR DISQUALIFICATION, FILED  
JANUARY 19, 2006.....98

MEMORANDUM DECISION ON SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND  
SAINT ALPHONSUS MEDICAL CENTER, INC.'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON THE FOURTH CLAIM FOR RELIEF IN SECOND  
AMENDED COUNTERCLAIM, FILED JUNE 13, 2007.....1870

MEMORANDUM DECISION ON SAINT ALPHONSUS' MOTION IN LIMINE RE:  
DOUGLAS M. BRANSON, FILED MAY 21, 2007 .....1317

MEMORANDUM DECISION ON SAINT ALPHONSUS' MOTION IN LIMINE RE:  
SHATTUCK HAMMOND MEMORANDUM; SAINT ALPHONSUS' RENEWED  
MOTION IN LIMINE RE: LEASE AND PARTNERSHIP TERM; SAINT  
ALPHONSUS' MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY;  
SAINT ALPHONSUS' MOTION IN LIMINE RE: DISSOCIATION; MRJA'S  
MOTION IN LIMINE PROHIBITING SARMC FROM INTRODUCING EVIDENCE  
OF ITS INTENT RE: TERM OF THE MRJA PARTNERSHIP; MRJA'S MOTION IN

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

LIMINE RE: ATTEMPTS TO PURCHASE MRIA AND/OR MRICI; MRIA'S MOTION IN LIMINE RE: COMMUNICATIONS BETWEEN SARMC AND MRIA ABOUT THE PURCHASE OF MRIA AND/OR MRICI; MRIA'S MOTION IN LIMINE RE: JUSTIFICATION FOR WITHDRAWAL; MRIA'S MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK MEMORANDUM; MRIA'S MOTION IN LIMINE RE: SARMC'S PROMOTION OF ITS OWN BEST INTERESTS; MRIA'S MOTION IN LIMINE RE: PURPORTED BREACHES BY MRIA OF FIDUCIARY DUTIES; MRIA'S MOTION IN LIMINE RE: EVIDENCE OF PATRICIA VANDEBERG'S STATUS AS A FORMER CATHOLIC NUN; MRIA'S MOTION IN LIMINE RE: SARMC'S BELIEFS ABOUT LEGALITY OF WITHDRAWAL FROM MRIA; MRIA'S MOTION TO STRIKE GREGORY S. VISTNESS; MRIA'S MOTION IN LIMINE RE: REFERRING PHYSICIANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES; MRIA'S MOTION IN LIMINE RE: SARMC'S RELIANCE ON ADVICE OF COUNSEL; MRIA'S MOTION IN LIMINE RE: INADVERTENTLY DISCLOSED PRIVILEGED DOCUMENTS; MRIA'S MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS OF DMR; SAINT ALPHONSUS' MOTION TO STRIKE THE AFFIDAVIT OF CHARLES WILHOITE IN OPPOSITION TO SARMC'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY; MOTION TO STRIKE SUPPLEMENTAL AFFIDAVIT OF GREGORY S. VISTNESS, PHD., FILED JULY 30, 2007 .....	2111
MEMORANDUM DECISION ON SAINT ALPHONSUS' OBJECTION TO MRI ASSOCIATES' EXPERT WITNESS DISCLOSURES FOR CHARLES A. WILHOITE AND BRUCE P. BUDGE AND THIRD-PARTY DEFENDANTS' MOTION TO EXCLUDE EXPERT WITNESSES, FILED JUNE 5, 2007.....	1439
MEMORANDUM DECISION ON SAINT ALPHONSUS'S APPLICATION FOR ATTORNEY FEES RELATIVE TO ANTITRUST AND EQUITY CLAIMS; SAINT ALPHONSUS'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT; SAINT ALPHONSUS'S MOTION FOR NEW TRIAL; MRIA'S MOTION FOR PREJUDGMENT INTEREST; MRIA'S MOTION FOR RECONSIDERATION; MRIA'S MOTION FOR ATTORNEY FEES AND COSTS, FILED NOVEMBER 19, 2007 .....	2426
MEMORANDUM DECISION ON THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MRIA ON BREACH OF FIDUCIARY DUTY CLAIM, FILED MAY 21, 2007 .....	1306
MOTION FOR COSTS AND FEES PURSUANT TO IRCP 54, FILED OCTOBER 9, 2007 .....	2328

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

MOTION FOR LEAVE TO FILE FIRST AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT, FILED JANUARY 31, 2006 .....	109
MOTION FOR LEAVE TO FILE SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT, FILED DECEMBER 20, 2006 .....	586
MOTION FOR LEAVE TO SUPPLEMENT BRIEFING ON MOTION FOR LEAVE TO FILE SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT, FILED FEBRUARY 1, 2007.....	822
MOTION FOR PARTIAL SUMMARY JUDGMENT RE: LEASE TERM, FILED DECEMBER 28, 2006.....	689
MOTION FOR RECONSIDERATION, OR, IN THE ALTERNATIVE, FOR PERMISSION TO APPEAL, FILED AUGUST 7, 2006.....	408
MOTION IN LIMINE RE: DOUGLAS M. BRANSON, FILED MARCH 23, 2007 .....	1021
MOTION IN LIMINE RE: EVIDENCE OF PATRICIA VANDENBERG'S STATUS AS A FORMER CATHOLIC NUN, FILED JUNE 5, 2007 .....	1503
MOTION TO AMEND TO SEEK PUNITIVE DAMAGES, FILED DECEMBER 20, 2006.....	674
MOTION TO COMPEL MRJA FINANCIAL STATEMENTS, FILED OCTOBER 10, 2006.....	495
MOTION TO DISALLOW MRJA'S REQUEST FOR COSTS AND ATTORNEY FEES, FILED OCTOBER 23, 2007.....	2343
MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER, FILED AUGUST 28, 2006 .....	433
MOTION TO QUASH SUBPOENA TO HEALTHSOUTH TREASURE VALLEY HOSPITAL DIAGNOSTIC IMAGING, FILED AUGUST 29, 2006.....	449
MOTION TO SEAL MEMORANDUM IN SUPPORT OF MRJA'S MOTION TO AMEND FIRST AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT, FILED DECEMBER 21, 2006.....	680
MOTION TO STRIKE AFFIDAVIT OF PROFESSOR DOUGLAS M. BRANSON, FILED JANUARY 4, 2007.....	697



**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

MOTION TO STRIKE REFERENCES TO PRIVILEGED DOCUMENTS, FILED JANUARY 4, 2007 .....	705
MOTION TO STRIKE SARMC'S MOTION TO STRIKE REFERENCES TO PRIVILEGED DOCUMENTS, FILED JANUARY 9, 2007 .....	744
MOTON FOR SUMMARY JUDGMENT, FILED JANUARY 4, 2007 .....	701
MRI ASSOCIATES' MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED MARCH 21, 2006 .....	186
MRIA'S MOTION AND MEMORANDUM IN SUPPORT OF ADMISSIBILITY OF CARL HARDER LETTER, FILED AUGUST 16, 2007 .....	2243
MRIA'S MOTION FOR PREJUDGMENT INTEREST, FILED OCTOBER 9, 2007 .....	2331
MRIA'S MOTION FOR RECONSIDERATION OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT, FILED OCTOBER 9, 2007 .....	2325
MRIA'S MOTION IN LIMINE PROHIBITING SARMC FROM INTRODUCING EVIDENCE OF ITS INTENT RE TERM OF THE MRIA PARTNERSHIP, FILED JUNE 5, 2007 .....	1474
MRIA'S MOTION IN LIMINE PROHIBITING SARMC FROM REFERRING TO ITS DISSOCIATION FROM THE MRIA PARTNERSHIP AS "LAWFUL" OR "NOT UNLAWFUL", FILED AUGUST 20, 2007 .....	2274
MRIA'S MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 5, 2007 .....	1491
MRIA'S MOTION IN LIMINE RE: ATTEMPTS TO PURCHASE MRIA AND/OR MRICI, FILED JUNE 5, 2007 .....	1478
MRIA'S MOTION IN LIMINE RE: GRANT CHAMBERLAIN TESTIMONY AND SUPPORTING MEMORANDUM, FILED AUGUST 28, 2007 .....	2289
MRIA'S MOTION IN LIMINE RE: INADVERTENTLY DISCLOSED PRIVILEGED DOCUMENT, FILED JUNE 5, 2007 .....	1518
MRIA'S MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS OF DMR, FILED JUNE 5, 2007 .....	1521

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

MRIA'S MOTION IN LIMINE RE: JUSTIFICATION FOR WITHDRAWAL, FILED JUNE 5, 2007 .....	1486
MRIA'S MOTION IN LIMINE RE: PURPORTED BREACHES BY MRJA OF FIDUCIARY DUTIES, FILED JUNE 5, 2007 .....	1499
MRIA'S MOTION IN LIMINE RE: PURPORTED BREACHES OF FIDUCIARY DUTIES AND WRONGFUL CONDUCT BY MRJA, DMR, AND DR. GILES, FILED JULY 18, 2007 .....	2095
MRIA'S MOTION IN LIMINE RE: REFERRING PHYSICIANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES, FILED JUNE 5, 2007.....	1511
MRIA'S MOTION IN LIMINE RE: SARMC PROMOTION OF ITS OWN BEST INTERESTS AS A DEFENSE TO IT FIDUCIARY DUTY BREACHES, FILED JUNE 5, 2007 .....	1495
MRIA'S MOTION IN LIMINE RE: SARMC'S BELIEFS ABOUT LEGALITY OF WITHDRAWAL FROM MRJA, FILED JUNE 5, 2007.....	1507
MRIA'S MOTION IN LIMINE RE: SARMC'S RELIANCE ON ADVICE OF COUNSEL, FILED JUNE 5, 2007 .....	1514
MRIA'S MOTION IN LIMINE RE: THIRD PARTY DEFENDANT SETTLEMENT, FILED JULY 18, 2007 .....	2091
MRIA'S MOTION IN LIMINE RE: THIRD PARTY DEFENDANTS' EXPERT WITNESSES, FILED JULY 18, 2007 .....	2099
MRIA'S MOTION IN LIMINE RE: YVONNE KETCHUM AFFIDAVIT, FILED JULY 11, 2007 .....	2055
MRIA'S MOTION IN LIMINIE RE: COMMUNICATIONS BETWEEN SARMC AND MRJA ABOUT THE PURCHASE OF MRJA AND/OR MRICI, FILED JUNE 5, 2007 .....	1482
MRIA'S MOTION TO STRIKE AFFIDAVIT OF YVONNE KETCHUM, FILED JULY 11, 2007 .....	2059
MRIA'S MOTION TO STRIKE GREGORY S. VISTNESS, FILED JUNE 5, 2007 .....	1608

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

MRIA'S MOTION TO STRIKE IMI'S JOINDER IN SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LACK OF PROOF OF DAMAGES CAUSATION, FILED JUNE 5, 2007 .....	1525
MRIA'S MOTION TO STRIKE SUPPLEMENTAL AFFIDAVIT OF GREGORY S. VISTNES, PH.D., FILED JUNE 15, 2007 .....	1989
MRIA'S NOTICE OF ERRATA RE: MEMORANDUM IN SUPPORT OF MRJA'S MOTION FOR SUMMARY JUDGMENT, FILED MAY 26, 2006.....	354
MRIA'S OBJECTION TO VERIFIED MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED OCTOBER 22, 2007 .....	2334
MRIA'S OPPOSITION TO IMI'S MOTION FOR SUMMARY JUDGMENT DISMISSING MRJA'S FIRST AMENDED THIRD PARTY COMPLAINT ON THE BASIS THAT NO DAMAGES HAVE BEEN PROVEN AND SARMC'S JOINDER THERETO, FILED JUNE 5, 2007 .....	1557
MRIA'S OPPOSITION TO MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR NEW TRIAL, FILED OCTOBER 24, 2007 .....	2346
MRIA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT BY THIRD PARTY DEFENDANTS ON THE "INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONSHIP" CLAIM, FILED JUNE 5, 2007 .....	1564
MRIA'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: ANTITRUST CLAIMS, FILED JUNE 5, 2007 .....	1611
MRIA'S OPPOSITION TO MOTION IN LIMINI RE: USE OF SHATTACK HAMMOND DOCUMENTS IN OPENING STATEMENTS, FILED AUGUST 6, 2007 .....	2226
MRIA'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION, OR, IN THE ALTERNATIVE, FOR PERMISSION TO APPEAL, FILED AUGUST 25, 2006 .....	412
MRIA'S OPPOSITION TO SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE FOURTH CLAIM FOR RELIEF IN SECOND AMENDED COUNTERCLAIM, FILED MAY 22, 2007 .....	1390
MRIA'S OPPOSITION TO SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DAMAGE CAUSATION OR, IN THE ALTERNATIVE, MOTION IN LIMINE, FILED JUNE 5, 2007 .....	1529

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

MRIA'S OPPOSITION TO SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: "INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP" CLAIM, FILED JUNE 22, 2007.....	2032A
MRIA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: DISSOCIATION DAMAGES, FILED AUGUST 14, 2007 .....	2235
MRIA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: DISSOCIATION, FILED JUNE 12, 2007.....	1663
MRIA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: MR. DOUGLAS M. BRANSON, FILED MAY 1, 2007 .....	1183
MRIA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY, FILED JUNE 12, 2007.....	1686
MRIA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 12, 2007 .....	1861
MRIA'S OPPOSITION TO SARMC'S MOTION TO DISMISS SPOILIATION CLAIM, FILED JUNE 12, 2007.....	1652
MRIA'S OPPOSITION TO SARMC'S RENEWED MOTION IN LIMINE RE: LEASE AND PARTNERSHIP TERM, FILED JUNE 12, 2007 .....	1677
MRIA'S OPPOSITION TO THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION AND SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION (MRIA'S SIXTEENTH CLAIM FOR RELIEF), FILED JUNE 5, 2007 .....	1586
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE PROHIBITING SARMC FROM INTRODUCING EVIDENCE OF ITS INTENT RE TERM OF THE MRIA PARTNERSHIP, FILED JUNE 15, 2007.....	1958
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE SARMC'S RELIANCE ON ADVICE OF COUNSEL, FILED JUNE 15, 2007 .....	1973
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 15, 2007 .....	1935

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 19, 2007 .....	2013
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: COMMUNICATIONS BETWEEN SARMC AND MRJA ABOUT THE PURCHASE OF MRJA AND/OR MRICI AND IN SUPPORT OF MRJA'S MOTION IN LIMINE RE: ATTEMPTS TO PURCHASE MRJA AND/OR MRICI, FILED JUNE 15, 2007 .....	1948
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: EVIDENCE OF PATRICIA VANDENBERG'S STATUS AS A FORMER CATHOLIC NUN, FILED JUNE 15, 2007.....	1985
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: INADVERTENTLY DISCLOSED PRIVILEGED DOCUMENT, FILED JUNE 15, 2007 .....	1921
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS OF DMR, FILED JUNE 15, 2007.....	1928
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: JUSTIFICATION FOR WITHDRAWAL, FILED JUNE 15, 2007 .....	1968
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: PURPORTED BREACHES BY MRJA OF FIDUCIARY DUTIES, FILED JUNE 15, 2007 .....	1962
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: REFERRING PHYSICIANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES, FILED JUNE 15, 2007.....	1953
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: REFERRING PHYSICIANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES, FILED JUNE 19, 2007 .....	2008
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: SARMC PROMOTION OF ITS OWN BEST INTERESTS AS A DEFENSE TO IT FIDUCIARY DUTY BREACHES, FILED JUNE 15, 2007 .....	1979
MRIA'S REPLY IN SUPPORT OF MOTION IN LIMINE RE: SARMC'S BELIEFS ABOUT LEGALITY OF WITHDRAWAL FROM MRJA, FILED JUNE 15, 2007 .....	1942
MRIA'S REPLY IN SUPPORT OF MOTION TO STRIKE GREGORY S. VISTNES, FILED JUNE 15, 2007.....	1992

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

MRIA'S RESPONSE TO SAINT ALPHONSUS DIVERSIFIED CARE, INC. AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER'S OBJECTION TO MRJA'S PROPOSED JUDGMENT, FILED SEPTEMBER 10, 2007 .....	2302
MRIA'S RESPONSE TO STATUTE OF LIMITATIONS ARGUMENT, FILED AUGUST 27, 2007 .....	2283
MRIA'S RESPONSE TO THIRD PARTY DEFENDANTS' OBJECTION TO MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS OF DMR, FILED JUNE 19, 2007.....	2017
MRIA'S SECOND SUPPLEMENTAL REQUEST FOR ADDITIONAL CLERK'S RECORDS, FILED FEBRUARY 27, 2008.....	2536
MRIA'S SUPPLEMENTAL DISCLOSURE OF WITNESSES PURSUANT TO AGREEMENT OF PARTIES, FILED MAY 23, 2007.....	1412
MRIA'S THIRD SUPPLEMENTAL REQUEST FOR ADDITIONAL CLERK'S RECORDS, FILED APRIL 7, 2008.....	2540
MRIA'S VERIFIED REPLY IN SUPPORT OF MOTION FOR COSTS AND FEES, FILED OCTOBER 26, 2007.....	2396
NON-IDAHO CASES CITED IN MEMORANDUM IN OPPOSITION TO SADC AND SARMC MEMORANDUM IN SUPPORT OF MOTION TO STRIKE, FILED MAY 30, 2006 .....	361
NON-IDAHO CASES CITED IN REPLY MEMORANDUM IN SUPPORT OF MRJA'S MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED MAY 30, 2006 .....	367
NON-IDAHO CASES IN SUPPORT OF MRJA'S MOTION FOR SUMMARY JUDGMENT, FILED MARCH 21, 2006.....	190
NOTICE OF APPEAL, FILED DECEMBER 27, 2007.....	2463
NOTICE OF CROSS-APPEAL, FILED JANUARY 17, 2008.....	2510
NOTICE OF HEARING ON THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON MISAPPROPRIATION OF TRADE SECRET CONFIDENTIAL INFORMATION CAUSE OF ACTION, FILED MAY 8, 2007 .....	1228

<b>INDEX TO THE CLERK'S RECORD.....</b>	<b>PAGE NO.</b>
NOTICE OF HEARING, FILED DECEMBER 20, 2006.....	677
NOTICE OF HEARING, FILED MAY 4, 2007 .....	1219
NOTICE OF MOTION AND MOTION FOR RECONSIDERATION, FILED OCTOBER 10, 2006.....	499
NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO I.R.C.P. 41(A)(1), FILED MAY 22, 2007 .....	1408
NOTICE OF WITHDRAWAL OF THIRD PARTY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, FILED FEBRUARY 12, 2007.....	873
OBJECTION TO AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION OF SAINT ALPHONSUS REGIONAL MEDICAL CENTER, FILED MAY 18, 2007 .....	1301
OBJECTION TO CLERK'S RECORD ON APPEAL AND REQUEST FOR ADDITIONAL ITEMS, FILED JULY 14, 2008 .....	2611
OBJECTION TO MRJA'S REVISED FEES AND COSTS, FILED DECEMBER 21, 2007.....	2460
OBJECTION TO REPORTER'S TRANSCRIPT ON APPEAL AND REQUEST FOR ADDITIONAL ITEMS, FILED JULY 17, 2008.....	2616
OPPOSITION TO BOISE ORTHOPEDIC CENTERS OF IDAHO'S MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER, FILED AUGUST 29, 2006 .....	462
OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT RE: LEASE TERM, FILED FEBRUARY 13, 2007 .....	876
OPPOSITION TO MOTION TO COMPEL MRJA FINANCIAL STATEMENTS, FILED OCTOBER 18, 2006.....	527
OPPOSITION TO MOTION TO STRIKE REFERENCES TO PRIVILEGED DOCUMENTS, FILED JANUARY 10, 2007.....	781
OPPOSITION TO MRI ASSOCIATES LLP'S, MOTION TO RECONSIDER COURT'S ORDER QUASHING SUBPOENA DIRECTED TO ORTHOPEDIC CENTERS OF IDAHO, D/B/A BOISE ORTHOPEDIC CLINIC, FILED OCTOBER 17, 2006.....	507

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

OPPOSITION TO SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION TO STRIKE THE AFFIDAVIT OF CHARLES WILHOITE IN OPPOSITION TO SARMC'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY, FILED JUNE 25, 2007 .....	2033
OPPOSITION TO SARMC'S MOTION TO EXCLUDE EXPERT WITNESSES, FILED MAY 22, 2007 .....	1356
OPPOSITION TO SARMC'S OBJECTION TO EXPERT WITNESS DISCLOSURE OF ED WHITELAW, FILED MAY 22, 2007 .....	1328
OPPOSITION TO THIRD PARTY DEFENDANTS' MOTION TO EXCLUDE EXPERT WITNESSES, FILED MAY 22, 2007 .....	1373
OPPOSITION TO THIRD PARTY DEFENDANTS' MOTON FOR PARITAL SUMMARY JUDGMENT, FILED APRIL 3, 2007 .....	1025
ORDER FOR CORRECTIONS AND ADDITIONS TO THE TRANSCRIPT AND RECORD, FILED AUGUST 1, 2008 .....	2628
ORDER FOR DISMISSAL OF THIRD PARTY DEFENDANTS WITH PREJUDICE, FILED JULY 30, 2007 .....	2143
ORDER ON MRI ASSOCIATES, LLP'S MOTION FOR LEAVE TO FILE SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT, FILED MARCH 2, 2007 .....	901
ORDER ON ORAL ARGUMENT PRESENTATION ON MOTION FOR JULY 2 <sup>ND</sup> 2007, FILED JUNE 28, 2007 .....	2050
ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....	475
ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....	479
ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....	483
ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....	487



**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

ORDER QUSHING MRI ASSOCIATES' SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED SEPTEMBER 5, 2006 .....	491
ORDER RE: SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION TO ENLARGE PAGE LIMIT, FILED OCTOBER 30, 2007.....	2423
ORDER TO FILE DOCUMENTS UNDER SEAL, FILED DECEMBER 6, 2005 .....	95
ORDER TO SEAL MEMORANDUM IN SUPPORT OF MRJA'S MOTION TO AMEND FIRST AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT, FILED DECEMBER 28, 2006.....	693
PINACLE IMAGING'S AND INTERMOUNTAIN ORTHOPAEDICS' MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER, FILED AUGUST 29, 2006 .....	471
PINNACLE IMAGING'S AND INTERMOUNTAIN ORTHOPAEDICS' JOINDER IN ST. LUKE'S, HEALTHSOUTH'S AND BOISE ORTHOPAEDIC CLINIC'S OPPOSITIONS TO MRI ASSOCIATES' MOTION FOR RECONSIDERATION, FILED OCTOBER 17, 2006.....	503
PLAINTIFF/COUNTERDEFENDANTS, SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S SUPPLEMENTAL DISCLOSURE OF LAY WITNESSES, FILED JUNE 1, 2007.....	1435
REGISTER OF ACTIONS .....	3
REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE FIRST AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT, FILED FEBRUARY 21, 2006 .....	120
REPLY IN SUPPORT OF MOTION FOR PREJUDGMENT INTEREST, FILED OCTOBER 26, 2007 .....	2409
REPLY IN SUPPORT OF MOTION TO AMEND TO SEEK PUNITIVE DAMAGES AGAINST SARMC, FILED JANUARY 9, 2007 .....	747
REPLY IN SUPPORT OF MOTION TO AMEND TO SEEK PUNITIVE DAMAGES AGAINST GSR/SARG, FILED JANUARY 9, 2007 .....	768

<b>INDEX TO THE CLERK'S RECORD.....</b>	<b>PAGE NO.</b>
REPLY IN SUPPORT OF MOTIONS FOR RECONSIDERATION OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT, FILED OCTOBER 26, 2007 .....	2416
REPORT OF DISCOVERY MASTER RE: MOTION TO COMPEL RESPONSES TO FIFTH SET OF INTERROGATORIES AND FOURTH SET OF REQUESTS FOR ADMISSION, FILED JUNE 12, 2007 .....	1709
REPORT OF DISCOVERY MASTER RE: ST.ALPHONSUS DIVERSIFIED CARE, INC., AND ST. ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR PROTECTIVE ORDER RE: MRJA ASSOCIATES, LLP, RULE 30(b)(6) DEPOSITION, FILED MAY 24, 2007 .....	1423
REQUEST FOR ADDITIONAL CLERK'S RECORD, FILED JANUARY 30, 2008 .....	2522
REQUEST FOR ADDITIONAL TRANSCRIPTS AND RECORDS, FILED JANUARY 10, 2008.....	2504
REQUEST FOR ADDITIONAL TRANSCRIPTS, FILED APRIL 25, 2008 .....	2543
REQUEST FOR CLARIFICATION, FILED JULY 31, 2007 .....	2146
RESPONSE TO OBJECTION TO ACCEPTANCE OF REMITTITUR, FILED JANUARY 3, 2008.....	2500
SAINT ALPHONSUS DIVERSIFIED CARE, INC. AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, FILED MAY 5, 2006.....	345
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE FOURTH CLAIM FOR RELIEF IN SECOND AMENDED COUNTERCLAIM, FILED APRIL 13, 2007.....	1063
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DAMAGE CAUSATION OR, IN THE ALTERNATIVE, MOTION IN LIMINE, FILED MAY 16, 2007 .....	1246
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DAMAGE CAUSATION OR, IN THE ALTERNATIVE, MOTION IN LIMINE, FILED MAY 16, 2007 .....	1250

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 5, 2007 .....	1453
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RENEWED MOTION IN LIMINE RE: LEASE AND PARTNERSHIP TERM, FILED JUNE 5, 2007 .....	1458
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY, FILED JUNE 5, 2007.....	1462
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: DISSOCIATION, FILED JUNE 5, 2007.....	1467
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: SARMC'S RELIANCE ON ADVICE OF COUNSEL, FILED JUNE 12, 2007.....	1702
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: SARMC'S BELIEFS ABOUT LEGALITY OF WITHDRAWAL FROM MRJA, FILED JUNE 12, 2007.....	1716
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: SARMC PROMOTION OF ITS OWN BEST INTERESTS AS A DEFENSE TO ITS FIDUCIARY DUTY BREACHES, FILED JUNE 12, 2007.....	1723
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: JUSTIFICATION FOR WITHDRAWAL, FILED JUNE 12, 2007.....	1785
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: REFERRING PHYSICIANS DESIGNATED BY SARG/GSR AS EXPERT WITNESSES, FILED JUNE 12, 2007 .....	1791

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 12, 2007 .....	1797
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: PURPORTED BREACHES BY MRJA OF FIDUCIARY DUTIES, FILED JUNE 12, 2007 .....	1807
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: EVIDENCE OF PATRICIA VANDENBERG'S STATUS AS A FORMER CATHOLIC NUN, FILED JUNE 12, 2007 .....	1816
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S JOINDER IN THIRD PARTY DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT RE: CIVIL CONSPIRACY CAUSE OF ACTION, FILED JUNE 12, 2007 .....	1823
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: ATTEMPTS TO PURCHASE MRJA AND/OR MRICI, FILED JUNE 12, 2007 .....	1828
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: INVESTMENTS BY MEMBERS ON DMR, FILED JUNE 12, 2007 .....	1835
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: COMMUNICATIONS BETWEEN SARMC AND MRJA ABOUT THE PURCHASE OF MRJA AND/OR MRICI, FILED JUNE 12, 2007 .....	1841
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE RE: TERM OF THE MRJA PARTNERSHIP, FILED JUNE 12, 2007 .....	1848
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION TO DISMISS SPOILIATION CLAIM, FILED JUNE 14, 2007 .....	1882

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION IN LIMINE RE: DISSOCIATION, FILED JUNE 14, 2007 .....	1896
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION IN LIMINE RE: SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 14, 2007.....	1908
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION IN LIMINE RE: LEASE AND PARTNERSHIP TERM, FILED JUNE 14, 2007 .....	1914
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION TO STRIKE THE AFFIDAVIT OF CHARLES WILHOITE IN OPPOSITION TO SARMC'S MOTION IN LIMINE RE: PURCHASE PRICE DAMAGE THEORY, FILED JUNE 18, 2007 .....	2004
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT RE: INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP CLAIM, FILED JUNE 27, 2007 .....	2040
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S WITNESS LIST, FILED JULY 12, 2007 .....	2063
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION TO COMPEL PRODUCTION OF DISCOVERY, FILED JULY 25, 2007 .....	2107
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: USE OF SHATTUCK HAMMOND DOCUMENTS IN OPENING STATEMENTS, FILED AUGUST 3, 2007 .....	2152
SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: USE OF DEPOSITION TESTIMONY IN OPENING STATEMENTS, FILED AUGUST 3, 2007 .....	2157

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S OPPOSITION TO MRJA'S MOTION TO COMPEL RE:  
SARMC'S FAILURE TO PROVIDE FOUNDATIONAL OBJECTIONS TO MRJA'S  
EXHIBITS, FILED AUGUST 6, 2007.....2167

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S REPLY TO MRJA'S OPPOSITION TO MOTION IN  
LIMINE RE: USE OF SHATTUCK HAMMOND DOCUMENTS IN OPENING  
STATEMENTS, FILED AUGUST 6, 2007 .....2171

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S MOTION IN LIMINE RE: DISSOCIATION DAMAGES,  
FILED AUGUST 10, 2007 .....2231

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S RESPONSE TO MRJA'S MOTION IN LIMINE  
PROHIBITING SARMC FROM REFERRING TO ITS DISSOCIATION FROM THE  
MRJA PARTNERSHIP AS "LAWFUL" OR "NOT UNLAWFUL", FILED  
AUGUST 22, 2007 .....2277

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S OBJECTION TO MRJA'S PROPOSED JUDGMENT,  
FILED SEPTEMBER 4, 2007 .....2298

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S MOTION FOR JUDGMENT NOTWITHSTANDING  
THE VERDICT AND MOTION FOR NEW TRIAL, FILED OCTOBER 3, 2007 .....2314

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S MOTION TO ENLARGE PAGE LIMIT, FILED  
OCTOBER 3, 2007 .....2318

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S MOTION TO ENLARGE PAGE LIMIT, FILED  
OCTOBER 29, 2007 .....2420

SAINT ALPHONSUS DIVERSIFIED CARE, INC., AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTER, INC.'S OBJECTION TO ACCEPTANCE OF REMITTITUR,  
FILED DECEMBER 20, 2007 .....2457

SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL  
MEDICAL CENTERS INC.'S MOTION TO STRIKE, FILED MAY 5, 2006 .....337

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED MAY 5, 2006 .....	341
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S SECOND MOTION TO STRIKE IN CONNECTION WITH SUMMARY JUDGMENT PROCEEDINGS, FILED MAY 30, 2006.....	357
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S ANSWER TO SECOND AMENDED COUNTERCLAIM, FILED MARCH 22, 2007.....	972
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON MRI ASSOCIATES, LLP'S ANTITRUST CLAIMS, FILED MAY 17, 2007.....	1255
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S MOTION FOR SUMMARY JUDGMENT ON MRI ASSOCIATES, LLP'S ANTITRUST CLAIMS, FILED MAY 17, 2007.....	1265
SAINT ALPHONSUS DIVERSIFIED CARE, INC.'S AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.'S ANSWER TO AMENDED COUNTERCLAIM, FILED APRIL 14, 2006 .....	272
SAINT ALPHONSUS' JOINDER IN THIRD PARTY DEFENDANTS' MOTION TO EXCLUDE EXPERT WITNESSES, FILED MAY 3, 2007 .....	1201
SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION (MRIA'S SIXTEENTH CLAIM FOR RELIEF), FILED MAY 18, 2007 .....	1273
SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON MISAPPROPRIATION OF TRADE SECRET CONFIDENTIAL INFORMATION CAUSE OF ACTION (MRIA'S SEVENTEENTH, EIGHTEENTH AND NINETEENTH CLAIMS FOR RELIEF), FILED MAY 18, 2007 .....	1282
SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP OR BUSINESS EXPECTATIONS (MRIA'S SEVENTH CLAIM FOR RELIEF), FILED MAY 18, 2007 .....	1292

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

SAINT ALPHONSUS' MOTION FOR PROTECTIVE ORDER REGARDING DISCOVERY DEPOSITIONS OF GRANT CHAMBERLAIN AND CINDY SCHAMP, FILED MAY 2, 2007 .....	1197
SAINT ALPHONSUS' MOTION TO DISMISS MRJA'S TWENTIETH CLAIM FOR RELIEF (RE: SPOILIATION), FILED MAY 21, 2007 .....	1324
SAINT ALPHONSUS' NOTICE OF ERRATA RE: MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED MAY 8, 2006 .....	349
SAINT ALPHONSUS' OBJECTION TO MRI ASSOCIATES' EXPERT WITNESS DISCLOSURES FOR CHARLES A. WILHOITE AND BRUCE P. BUDGE, FILED APRIL 26, 2007 .....	1161
SAINT ALPHONSUS' OBJECTION TO THE EXPERT WITNESS DISCLOSURE OF W. ED WHITELAW / ECONORTHWEST DATED MARCH 19, 2007, FILED MAY 4, 2007 .....	1215
SAINT ALPHONSUS' REPLY TO MRJA'S MEMORANDUM IN OPPOSITION TO SARMC'S MOTION TO STRIKE AFFIDAVIT OF PROFESSOR DOUGLAS M. BRANSON, FILED JANUARY 10, 2007 .....	802
SAINT ALPHONSUS' REPLY TO MRJA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT RE: LEASE TERM, FILED FEBRUARY 20, 2007 .....	890
SAINT ALPHONSUS' REPLY TO MRJA'S OPPOSITION TO SARMC'S MOTION IN LIMINE RE: DOUGLAS M. BRANSON, FILED MAY 3, 2007 .....	1205
SAINT ALPHONSUS' REPLY TO MRJA'S OPPOSITION TO SARMC'S OBJECTION TO EXPERT WITNESS DISCLOSURE OF ED WHITELAW, FILED MAY 24, 2007 .....	1430
SAINT ALPHONSUS'S APPLICATION FOR ATTORNEY FEES RELATIVE TO ANTITRUST AND EQUITY CLAIMS, FILED OCTOBER 9, 2007 .....	2321
SCHEDULING ORDER, FILED JULY 29, 2005 .....	90
SECOND AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD-PARTY COMPLAINT, FILED MARCH 2, 2007 .....	905
SECOND AMENDED JUDGMENT, FILED FEBRUARY 26, 2008 .....	2533



**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

SPECIAL VERDICT, FILED AUGUST 30, 2007 .....	2293
ST. LUKE'S REGIONAL MEDICAL CENTER LTD.'S OPPOSITION TO MOTION TO RECONSIDER DECISION TO QUASH MRIA'S ANTITRUST SUBPOENAS, FILED OCTOBER 17, 2006.....	511
ST. LUKE'S REGIONAL MEDICAL CENTER LTD'S MOTION TO QUASH DEFENDANT MRI ASSOCIATES, LLP'S SUBPOENA DUCES TECUM AND FOR PROTECTIVE ORDER, FILED AUGUST 28, 2006 .....	444
STATEMENT OF FACTS IN SUPPORT MRIA'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE: ANTITRUST CLAIMS, FILED JUNE 5, 2007.....	1638
STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION (MRIA'S SIXTEENTH CLAIM FOR RELIEF), FILED MAY 18, 2007 .....	1277
STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON MISAPPROPRIATION OF TRADE SECRET CONFIDENTIAL INFORMATION CAUSE OF ACTION (MRIA'S SEVENTEENTH, EIGHTEENTH AND NINETEENTH CLAIMS FOR RELIEF), FILED MAY 18, 2007 .....	1286
STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF SAINT ALPHONSUS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP OR BUSINESS EXPECTATIONS (MRIA'S SEVENTH CLAIM FOR RELIEF) FILED MAY 18, 2007 .....	1296
STIPULATED PROTECTIVE ORDER, FILED JANUARY 23, 2007 .....	810
STIPULATION FOR CORRECTIONS AND ADDITIONS TO THE TRANSCRIPT AND RECORD, FILED JULY 31, 2008 .....	2622
STIPULATION FOR DISMISSAL OF THIRD PARTY DEFENDANTS WITH PREJUDICE, FILED JULY 20, 2007 .....	2103
SUBPOENA FOR DOCUMENTS AND NOTICE OF TAKING DEPOSITION, FILED AUGUST 28, 2006 .....	438

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

SUPPLEMENTAL REQUEST FOR ADDITIONAL CLERK'S RECORDS, FILED FEBRUARY 5, 2008 .....	2526
SUPPLEMENTAL REQUEST FOR ADDITIONAL CLERK'S RECORD, FILED FEBRUARY 11, 2008 .....	2530
THIRD PARTY DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MRJA ON BREACH OF FIDUCIARY DUTY CLAIM, FILED MARCH 7, 2007 .....	947
THIRD PARTY DEFENDANTS' ANSWER TO FIRST AMENDED THIRD PARTY COMPLAINT, FILED MARCH 22, 2007 .....	996
THIRD PARTY DEFENDANTS' ANSWER TO FIRST AMENDED THIRD PARTY COMPLAINT, FILED MARCH 22, 2007 .....	1001
THIRD PARTY DEFENDANTS' ANSWER TO THIRD PARTY COMPLAINT, FILED APRIL 28, 2006 .....	311
THIRD PARTY DEFENDANTS' EXPERT WITNESS DISCLOSURE PURSUANT TO RULE 26(b)(4)(A)(i) OF THE IDAHO RULES OF CIVIL PROCEDURE, FILED APRIL 23, 2007 .....	1067
THIRD PARTY DEFENDANTS' JOINDER IN SAINT ALPHONSUS REGIONAL MEDICAL CENTER'S MOTION FOR SUMMARY JUDGMENT ON MRJA ASSOCIATES, LLP'S ANTITRUST CLAIMS, FILED MAY 18, 2007 .....	1269
THIRD PARTY DEFENDANTS' JOINDER IN SAINT ALPHONSUS' OBJECTION TO THE EXPERT WITNESS DISCLOSURE OF W. ED WHITELAW/ECONORTHWEST DATED MARCH 19, 2007, FILED MAY 8, 2007 .....	1225
THIRD PARTY DEFENDANTS' JOINDER IN SAINT ALPHONSUS' OBJECTION TO THE EXPERT WITNESS DISCLOSURE OF W. ED WHITELAW/ECONORTHWEST DATED MARCH 19, 2007, FILED JUNE 5, 2007 .....	1450
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION, FILED MAY 14, 2007 .....	1243
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEFAMATION CAUSE OF ACTION, FILED APRIL 26, 2007 .....	1180

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON IDAHO CONSUMER PROTECTION ACT CAUSE OF ACTION, FILED MAY 11, 2007 .....	1234
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON MISAPPROPRIATION OF TRADE SECRET CONFIDENTIAL INFORMATION CAUSE OF ACTION, FILED MAY 8, 2007.....	1222
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE "INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONSHIP" CLAIM, FILED MAY 14, 2007 .....	1237
THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIP CAUSE OF ACTION, FILED MAY 14, 2007.....	1240
THIRD PARTY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DISMISSING MRIA'S FIRST AMENDED THIRD PARTY COMPLAINT ON THE BASIS THAT NO DAMAGES HAVE BEEN PROVEN, FILED MAY 11, 2007 .....	1231
THIRD PARTY DEFENDANTS' MOTION TO EXCLUDE EXPERT WITNESSES, FILED APRIL 26, 2007 .....	1172
THIRD PARTY DEFENDANTS' NOTICE ON NON-OPPOSITION TO MRJA'S VOLUNTARY DISMISSAL OF CLAIMS, FILED JUNE 5, 2007 .....	1605
THIRD PARTY DEFENDANTS' OBJECTION TO MRJA'S MOTION IN LIMINE RE ADMISSIBILITY OF SHATTUCK HAMMOND MEMORANDUM, FILED JUNE 12, 2007 .....	1776
THIRD PARTY DEFENDANTS' OBJECTION TO MRJA'S MOTION IN LIMINE RE REFERRING PHYSICIANS DESIGNATED BY SARMC/GSR AS EXPERT WITNESSES, FILED JUNE 12, 2007 .....	1771
THIRD PARTY DEFENDANTS' OPPOSITION TO MRJA'S MOTION IN LIMINE RE INVESTMENTS BY MEMBERS OF DMR, FILED JUNE 12, 2007 .....	1739
THIRD PARTY DEFENDANTS' REPLY TO MIRA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT BY THIRD PARTY DEFENDANTS ON "INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONSHIP" CLAIM, FILED JUNE 12, 2007 .....	1747

**INDEX TO THE CLERK'S RECORD.....PAGE NO.**

THIRD PARTY DEFENDANTS' REPLY TO MRJA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT BY THIRD PARTY DEFENDANTS DISMISSING MRJA'S FIRST AMENDED THIRD PARTY COMPLAINT ON THE BASIS THAT NO DAMAGES HAVE BEEN PROVEN, FILED JUNE 12, 2007 .....	1780
THIRD PARTY DEFENDANTS' RESPONSE TO MIRA'S MOTION TO STRIKE IMI'S JOINDER IN SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LACK OF PROOF OF DAMAGES CAUSATION, FILED JUNE 12, 2007 .....	1760
THIRD PARTY DEFENDANTS' RESPONSE TO MRJA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON BREACH OF FIDUCIARY DUTY CLAIM, FILED APRIL 10, 2007.....	1049
THIRD PARTY DEFENDANTS' RESPONSE TO MRJA'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON CIVIL CONSPIRACY CAUSE OF ACTION, FILED JUNE 12, 2007 .....	1732
THIRD PARTY DEFENDANTS' RESPONSE TO MRJA'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT RE ANTITRUST CLAIMS, FILED JUNE 12, 2007.....	1743
THIRD PARTY DEFENDANTS' RESPONSE TO MRJA'S OPPOSITION TO SARMC'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE DAMAGES CAUSATION, FILED JUNE 12, 2007 .....	1764
THIRD PARTY DEFENDANTS' RESPONSE/OBJECTION TO MRJA'S ERRONEOUS STATEMENT REGARDING UNTIMELINESS OF THIRD PARTY DEFENDANTS' PLEADINGS, FILED JUNE 20, 2007 .....	2023

including MRI, CT, x-ray, ultrasound, and special procedures, and deny all other allegations in paragraph 23.

17. In answer to paragraphs 24 and 25 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from these Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 24 and 25, other than admitting that GSR was not a partner in MRIA.

18. In answer to paragraph 26 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants admit that during 1998-1999 numerous discussions occurred to explore possible arrangements between MRIA and GSR, and that during this time Dr. Giles worked on behalf of MRIA and DMR, and admit that GSR and MRIA were unable to reach an agreement because of MRIA's unreasonable negotiating position. They deny the remaining allegations in paragraph 26.

19. In answer to paragraph 27 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants are without knowledge as to MRIA's actions and knowledge, and therefore deny the allegations in paragraph 27.

20. In answer to paragraph 28 of the Second Amended Counterclaim and First Amended Third Party Complaint, several of the allegations of this paragraph relate to another party and no answer by the Third Party Defendants appears necessary. If one is necessary, Third Party Defendants deny these allegations. As to any allegations that relate to Third Party Defendants, Third Party Defendants deny such allegations.

21. In answer to paragraph 29 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants cannot answer, as the allegation dealing with "these negotiations" is unclear as to the timing and no response is possible. Therefore, the Third Party Defendants deny the allegations in paragraph 29.

22. In answer to paragraph 30 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations in paragraph 30.

23. In answer to paragraph 31 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph appears to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 31.

24. In answer to paragraph 32 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants admit that Dr. Giles was asked to resolve his conflict of interest, and assert that he decided to leave GSR because he thought the financial opportunities were greater at MRIA. Third Party Defendants deny all other allegations in paragraph 32.

25. In answer to paragraph 33 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph appears to relate solely to other parties and no answer from these Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 33.

26. In answer to paragraph 34 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants admit that on July 1, 2001, St. Alphonsus executed the Operating Agreement of IMI but affirmatively state that the Operating

Agreement speaks for itself and deny all other allegations and interpretations contained in paragraph 34.

27. In answer to paragraph 35 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants state that the Operating Agreement speaks for itself and therefore deny all allegations and interpretations contained in paragraph 35.

28. In answer to paragraph 36 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants admit that St. Alphonsus was only involved in the ownership, operation and management of the "non-MRI" portion of IMI's business under the Operating Agreement and deny all remaining allegations in paragraph 36.

29. In answer to paragraph 37 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants state that the Operating Agreement speaks for itself and therefore deny all allegations in paragraph 37.

30. In answer to paragraph 38 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph appears to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 38.

31. In answer to paragraph 39 of the Second Amended Counterclaim and First Amended Third Party Complaint, most of the allegations of this paragraph appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 39, and specifically deny the allegation in the last sentence of paragraph 39.

32. In answer to paragraph 40 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraph 40.

33. In answer to paragraph 41 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph appears to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 41.

34. In answer to paragraph 42 of the Second Amended Counterclaim and First Amended Third Party Complaint Third Party Defendants deny the allegations contained in paragraph 42.

35. In answer to paragraphs 43 and 44 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, Third Party Defendants deny the allegations in paragraphs 43 and 44.

36. In answer to paragraph 45 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph appears to relate to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 45. Any allegations that relate to Third Party Defendants are denied.

37. In answer to paragraphs 46, 47 and 48 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate generally to other parties



and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 46, 47 and 48.

38. In answer to paragraph 49 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations in paragraph 49.

39. In answer to paragraph 50 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants admit the allegations in paragraph 50.

40. In answer to paragraph 51 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants admit that GSR sent out a letter to a number of physicians informing them that GSR had been terminated by MRIA from interpreting outpatient images from the MRI Center and that only St. Alphonsus inpatient and ER patient examinations would be available on DR/Web Ambassador. Third Party Defendants deny all other allegations in paragraph 51.

41. In answer to paragraphs 52 and 53 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 52 and 53.

42. In answer to paragraph 54 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph appears to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 54.

43. In answer to paragraphs 55, 56 and 57 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties

and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 55, 56 and 57.

44. In answer to paragraphs 58, 59, 60 and 61 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 58, 59, 60, and 61.

45. In answer to paragraph 62 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants admit that generally the referring physician selects a technical component provider ("TCP"). Third Party Defendants are without knowledge as to whether there is a general practice of referring physicians to refer out-patients to TCP's associated with the hospital where they practice. All other allegations in paragraph 62 relate to another party, and no answer from Third Party Defendants appears necessary. If such answer is necessary, Third Party Defendants deny such allegations.

46. In answer to paragraph 63 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph refers to the beliefs of non-parties and Third Party Defendants are without knowledge as to the truth of this allegation and therefore deny the same.

47. In answer to paragraphs 64, 65, 66, 67 and 68 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 64, 65, 66, 67 and 68.

48. In answer to paragraph 69 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph appears to relate solely to other parties and no

answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 69.

49. In answer to paragraphs 70, 71 and 72 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 70, 71 and 72.

50. In answer to paragraph 73 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-72.

51. In answer to paragraphs 74, 75, 76, 77 and 78 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations contained in paragraphs 74, 75, 76, 77 and 78.

52. In answer to paragraph 79 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-78.

53. In answer to paragraph 80 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph appears to relate solely to other parties and no answer from these Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 80.

54. In answer to paragraph 81 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-80.

55. In answer to paragraphs 82 and 83 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 82 and 83.

56. In answer to paragraph 84 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-83.

57. In answer to paragraphs 85, 86, 87, 88 and 89 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 85, 86, 87, 88 and 89.

58. In answer to paragraph 90 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-89.

59. In answer to paragraphs 91, 92, 93, and 94 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 91, 92, 93, and 94.

60. In answer to paragraph 95 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-94

61. In answer to paragraphs 96 and 97 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 96, and 97.

62. In answer to paragraph 98 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-97.

63. In answer to paragraphs 99, 100, 101, 102 and 103 the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 99, 100, 101, 102 and 103.

64. In answer to paragraph 104 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-103.

65. In answer to paragraphs 105, 106, 107, 108 and 109 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is

necessary, then Third Party Defendants deny the allegations in paragraphs 105, 106, 107, 108 and 109.

66. In answer to paragraph 110 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-109.

67. In answer to paragraphs 111, 112, 113, 114, 115, 116 and 117 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 111, 112, 113, 114, 115, 116 and 117.

68. In answer to paragraph 118 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraph 118.

69. In answer to paragraph 119 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraph 1 – 118.

70. In answer to paragraph 120, 121 and 122 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 120, 121 and 122.

71. In answer to paragraph 123 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-122.

72. In answer to paragraphs 124, 125, 126 and 127 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 124, 125, 126 and 127.

73. In answer to paragraph 128 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-127.

74. In answer to paragraphs 129, 130, 131 and 132 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 129, 130, 131 and 132.

75. In answer to paragraph 133 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-132.

76. In answer to paragraph 134, 135 and 136 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 134, 135 and 136.

77. In answer to paragraph 137 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-136.

78. In answer to paragraph 138 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants admit they were aware that at some times St. Alphonsus had some type of a partnership relationship with MRJA. As for other allegations in this paragraph, they appear to relate solely to other parties and no answer from

Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the remaining allegations in paragraph 138.

79. In answer to paragraphs 139 and 140 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 139 and 140.

80. In answer to paragraph 141 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-140.

81. In answer to paragraphs 142, 143, 144, 145 and 146 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 142, 143, 144, 145 and 146.

82. In answer to paragraph 147 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-146.

83. In answer to paragraphs 148 and 149 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 148 and 149.

84. In answer to paragraph 150 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-149.

85. In answer to paragraph 151 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants admit that St. Alphonsus appointed



certain persons to the IMI Management Committee dealing only with the non-MRI division. Other allegations in the paragraph appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the other allegations in paragraph 151.

86. In answer to paragraphs 152, 153 and 154 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 152, 153 and 154.

87. In answer to paragraph 155 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraph 155.

88. In answer to paragraph 156 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1 – 155.

89. In answer to paragraph 157 of the Second Amended Counterclaim and First Amended Third Party Complaint, this paragraph appears to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraph 157.

90. In answer to paragraphs 158 and 159 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 158 and 159.

91. In answer to paragraph 160 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-159.

92. In answer to paragraphs 161 and 162 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants deny the allegations contained in paragraphs 161 and 162.

93. In answer to paragraph 163 of the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants reassert their responses to paragraphs 1-162.

94. In answer to paragraphs 164, 165 and 166 of the Second Amended Counterclaim and First Amended Third Party Complaint, these paragraphs appear to relate solely to other parties and no answer from Third Party Defendants appears necessary. If such answer is necessary, then Third Party Defendants deny the allegations in paragraphs 164, 165 and 166.

95. Third Party Defendants deny the allegations contained in paragraph 167.

#### **FIRST AFFIRMATIVE DEFENSE**

MRJA is estopped to seek relief for the claims in the Second Amended Counterclaim and First Amended Third Party Complaint.

#### **SECOND AFFIRMATIVE DEFENSE**

MRJA has waived its right to seek the relief claimed in the Second Amended Counterclaim and First Amended Third Party Complaint.

### **THIRD AFFIRMATIVE DEFENSE**

MRIA is barred by the doctrine of unclean hands from asserting any claim against Third Party Defendants.

### **FOURTH AFFIRMATIVE DEFENSE**

MRIA's Second Amended Counterclaim and First Amended Third Party Complaint is barred by the applicable statutes of limitations found in, among other provisions, Idaho Code §§ 5-218, 5-219 and 5-224, and §§ 4(b) and 5(b) of the Clayton Act.

### **FIFTH AFFIRMATIVE DEFENSE**

MRIA's Second Amended Counterclaim and First Amended Third Party Complaint is barred by the doctrine of laches.

### **SIXTH AFFIRMATIVE DEFENSE**

MRIA's claims are barred because MRIA lacks standing to bring or maintain this action for reasons including, but not limited to, the fact that the alleged injuries are not the type addressed by the laws under which MRIA attempts to state its claims.

### **SEVENTH AFFIRMATIVE DEFENSE**

Third Party Defendants' actions are privileged under the qualified business privilege.

### **EIGHTH AFFIRMATIVE DEFENSE**

Third Party Defendants are entitled to the qualified common interest privilege to defeat any claim for libel.

### **NINTH AFFIRMATIVE DEFENSE**

Third Party Defendants are entitled to the qualified protection of third persons' privilege to defeat any claim for libel.

**TENTH AFFIRMATIVE DEFENSE**

No publications or communications by Third Party Defendants constitute defamatory communications.

**ELEVENTH AFFIRMATIVE DEFENSE**

Any communications by Third Party Defendants were made in good faith and upon reasonable reliance as to the truth of the matter.

**TWELFTH AFFIRMATIVE DEFENSE**

Third Party Defendants made no knowingly false statements and made no statements with malice, and any unintentional false statements were retracted.

**THIRTEENTH AFFIRMATIVE DEFENSE**

MRIA suffered no ascertainable loss and therefore has no claim under the Consumer Protection Act.

**FOURTEENTH AFFIRMATIVE DEFENSE**

MRIA's Consumer Protection Act claim is barred by the provisions of Idaho Code § 48-605(1).

**FIFTEENTH AFFIRMATIVE DEFENSE**

MRIA's claims are barred because MRIA has not suffered an antitrust injury.

**SIXTEENTH AFFIRMATIVE DEFENSE**

MRIA's claims are barred in whole or in part because the Second Amended Counterclaim and First Amended Third Party Complaint does not adequately define the relevant market or markets.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

MRIA's claims are barred in whole or in part because the alleged conduct by Third Party Defendants has not unreasonably restrained trade.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

MRIA's claims are barred in whole or in part because the alleged conduct by Third Party Defendants did not lessen competition in any relevant market.

**NINETEENTH AFFIRMATIVE DEFENSE**

MRIA's claims are barred in whole or in part because any action or omission undertaken by Third Party Defendants alleged in the Second Amended Counterclaim and First Amended Third Party Complaint constituted bona fide business competition and was undertaken in pursuit of its lawful business interest and is therefore privileged.

**TWENTIETH AFFIRMATIVE DEFENSE**

If Third Party Defendants have any monopoly power, which they deny, such power was lawfully acquired.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

MRIA's claims for damages are barred because its alleged damages are speculative and because of the impossibility of ascertaining and allocating those alleged damages. This is not an admission that MRIA has any damages.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Under Idaho Law, MRIA has an obligation to mitigate its damages and Third Party Defendants are not liable for any damages that might have been mitigated or which were caused by MRIA's own conduct.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

The actions or inactions by Third Party Defendants do not constitute the proximate cause of any damages suffered by MRIA, if any such damages have been suffered.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The damages of which MRIA complains, if any, were proximately caused or contributed to by its own negligence or other legal fault, or the negligence or other legal fault of third persons for which Third Party Defendants are not responsible.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Damages, if any, which may have been sustained by MRIA were caused by MRIA's own actions or inactions.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

MRIA's claims, or some of them, are barred under the doctrine of the law of the case.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

MRIA's claims are barred because it lacks standing to assert claims of other entities or on behalf of other entities.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

MRIA's claims are barred by the doctrines of collateral estoppel and/or res judicata.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

MRIA's claims against Third Party Defendants are barred because of the lack of any contractual, partnership or other relevant relationship.

**THIRTIETH AFFIRMATIVE DEFENSE**

MRIA's claims are preempted by, among others, the Idaho Trade Secrets Act.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

MRIA's claims are barred because MRIA is not the real party in interest.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

MRIA has no standing to pursue damages claims for damage incurred by MRIC or MRIM, which are distinct legal entities which are not parties to the present action.

**ATTORNEYS FEES**

In order to defend this Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants have been required to retain the services of Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered, and Saetrum Law Offices and are entitled to recover attorneys fees pursuant to Idaho Code §§ 12-120, 12-121, and/or Idaho Rules of Civil Procedure Rule 54, among other provisions.

**PRAYER FOR RELIEF**

WHEREFORE, having answered all allegations in the Second Amended Counterclaim and First Amended Third Party Complaint, Third Party Defendants pray for judgment as follows:

1. That MRIA's Second Amended Counterclaim and First Amended Third Party Complaint be dismissed with prejudice and that Third Party MRIA take nothing thereby.
2. That Third Party Defendants be dismissed with prejudice from the Second Amended Counterclaim and First Amended Third Party Complaint.
3. That Third Party Defendants be awarded their costs and attorneys fees for defending this action.
4. For such rather and further relief as the Court deems just and proper.

DATED this 22nd day of March, 2007.

EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD

BY:

Warren E. Jones

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22nd day of March, 2007, I caused to be served a true and correct copy of the foregoing document upon the following individual(s)/entity(ies), by the method indicated, and addressed as follows:

Thomas A. Banducci  
G. Rey Reinhardt, IV  
Greener, Banducci, Shoemaker, PA  
950 West Bannock, Suite 900  
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivery  
☐ Facsimile to (208) 319-2601

Jack S. Gjording  
Trudy Hanson Fouser  
Bobbi K. Dominick  
Gjording & Fouser, PLLC  
509 West Hays Street  
Post Office Box 2837  
Boise, Idaho 83701

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 336-9177

Patrick J. Miller  
Givens Pursley, LLP  
601 West Bannock Street  
Post Office Box 2720  
Boise, Idaho 83701-2720

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivery  
☐ Facsimile to (208) 388-1300

Rodney R. Saetrum  
David W. Lloyd  
Saetrum Law Offices  
101 South Capitol Boulevard, Suite 1800  
Post Office Box 7425  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 336-0448

Warren E. Jones



NO. \_\_\_\_\_ FILED \_\_\_\_\_ 4:26  
A.M. \_\_\_\_\_ P.M.

MAR 23 2007

J. DAVID NAYARRO, Clerk  
By J. EARLE  
DEPUTY

Jack S. Gjording, ISB No. 1105  
Trudy Hanson Fouser, ISB No. 2794  
Bobbi K. Dominick, of Counsel, ISB No. 2895  
GJORDING & FOUSER, PLLC  
509 W. Hays Street  
P.O. Box 2837  
Boise, Idaho 83701  
Telephone: (208)336-9777  
Facsimile: (208)336-9177

Patrick J. Miller, ISB No. 3221  
J. Will Varin, ISB No. 6981  
GIVENS PURSLEY LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, ID 83701-2720  
Telephone: (208) 388-1200  
Facsimile: (208) 388-1300

Attorneys for Plaintiff/CounterDefendants

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

SAINT ALPHONSUS DIVERSIFIED  
CARE, INC., an Idaho nonprofit corporation,

Plaintiff,

vs.

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Defendant.

Case No. CV OC 0408219D

**MOTION IN LIMINE RE:  
DOUGLAS M. BRANSON**

MRI ASSOCIATES, LLP, an Idaho limited liability partnership,

Counterclaimant,

vs.

SAINT ALPHONSUS DIVERSIFIED CARE, INC., an Idaho nonprofit corporation; SAINT ALPHONSUS REGIONAL MEDICAL CENTER,

Counterdefendants.

---

MRI ASSOCIATES, LLP, an Idaho limited liability partnership,

Third-Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING, LLC, an Idaho limited liability company; GEM STATE RADIOLOGY, LLP, an Idaho limited liability partnership; and IMAGING CENTER RADIOLOGISTS, LLP, an Idaho limited liability partnership,

Third-Party Defendants.

COME NOW Plaintiff/CounterDefendants, Saint Alphonsus Diversified Care, Inc., and Saint Alphonsus Regional Medical Center, Inc. (collectively, "Saint Alphonsus"), and pursuant to Idaho Rules of Evidence 104, 403 and 702-704, move the Court for an Order finding that the expert opinions of Prof. Douglas M. Branson are not admissible at trial because: (1) they consist of legal opinions, which would not assist the trier of fact to understand the evidence or to determine a fact in issue; (2) Prof. Branson's

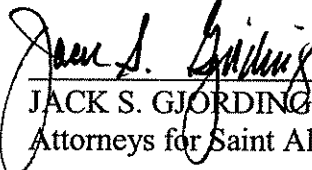
opinions invade the province of both the Court and jury; and (3) presentation of Prof. Branson's opinions at trial would cause undue delay and be a waste of time at trial and are inadmissible under Rule 403.

This Motion is supported by the Affidavit of Jack S. Gjording and a Memorandum in Support filed contemporaneously herewith.

Oral argument is requested.

DATED this 23<sup>rd</sup> day of March, 2007.

GJORDING & FOUSER, PLLC

  
\_\_\_\_\_  
JACK S. GJORDING  
Attorneys for Saint Alphonsus

### CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of March, 2007, a true and correct copy of

the foregoing was served upon the following individual(s) by the means indicated:

Thomas A. Banducci  
GREENER BANDUCCI SHOEMAKER P.A.  
950 West Bannock, Suite 900  
Boise, ID 83702  
Facsimile (208) 319-2601

- ☐ U.S. mail, postage prepaid
- ☐ express mail
- ☒ hand delivery
- ☐ facsimile

Warren E. Jones  
Joseph H. Uberuaga  
EBERLE BERLIN KADING TURNBOW  
McKLVEEN & JONES  
300 N. 6<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Boise, ID 83702  
Facsimile (208) 344-8542

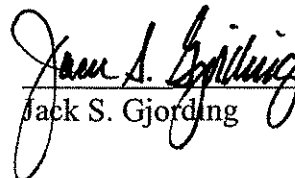
- ☐ U.S. mail, postage prepaid
- ☐ express mail
- ☒ hand delivery
- ☐ facsimile

Rodney R. Saetrum  
SAETRUM LAW OFFICES  
101 S. Capitol Boulevard, Suite 1800  
Boise, ID 83702  
Facsimile (208) 336-0448

- ☒ U.S. mail, postage prepaid
- ☐ express mail
- ☐ hand delivery
- ☐ facsimile

Patrick J. Miller  
GIVENS PURSLEY LLP  
601 West Bannock Street  
P.O. Box 2720  
Boise, ID 83701  
Facsimile (208) 388-1300

- ☐ U.S. mail, postage prepaid
- ☐ express mail
- ☒ hand delivery
- ☐ facsimile

  
\_\_\_\_\_  
Jack S. Gjording

NO. 5 FILED  
A.M. P.M.

APR 03 2007

J. DAVID NAVARRO, Clerk  
By M. MORALES  
DEPUTY

Thomas A. Banducci (ISB No. 2453)  
*tbanducci@greenerlaw.com*  
G. Rey Reinhardt, IV (ISB No. 6209)  
*greinhardt@greenerlaw.com*  
Daniel J. Gordon (ISB No. 6051)  
*dgordon@greenerlaw.com*  
GREENER BANDUCCI SHOEMAKER P.A.  
950 W. Bannock Street, Suite 900  
Boise, ID 83702  
Telephone: (208) 319-2600  
Facsimile: (208) 319-2601

Attorneys for  
Defendants/Counterclaimants/Third Party  
Plaintiff MRI Associates, LLP

---

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

---

SAINT ALPHONSUS DIVERSIFIED  
CARE, INC., an Idaho nonprofit  
corporation,

Plaintiff,

v.

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Defendant.

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

CounterClaimant,

v.

SAINT ALPHONSUS DIVERSIFIED  
CARE, INC., an Idaho nonprofit  
corporation; SAINT ALPHONSUS  
REGIONAL MEDICAL CENTER,

CounterDefendants.

Case No. CV OC 0408219D

**OPPOSITION TO THIRD PARTY  
DEFENDANTS' MOTION FOR  
PARITAL SUMMARY JUDGMENT**

---

MRI ASSOCIATES, LLP, an Idaho limited liability partnership,

Third-Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING, LLC, an Idaho limited liability company; GEM STATE RADIOLOGY, LLP, an Idaho limited liability partnership; and IMAGING CENTER RADIOLOGISTS, LLP, an Idaho limited liability partnership,

Third-Party Defendants.

---

COMES NOW Defendant/Counterclaimant/Third-Party Plaintiff MRI Associates, LLP, an Idaho limited liability partnership ("MRIA/MRICI"<sup>1</sup>), by and through its attorneys of record, Greener Banducci Shoemaker, P.A., and opposes the third party defendants' ("SARG/GSR"<sup>2</sup>) motion for partial summary judgment. Affidavits in support of this opposition memorandum have been filed concurrently herewith.

### I. INTRODUCTION

SARG/GSR is not entitled to summary judgment. A fiduciary relationship existed between SARG/GSR and MRIA/MRICI. Moreover, SARG/GSR breached the duties it

---

<sup>1</sup> MRIA is a partnership formed in 1985 for the purpose of, among other things, operating a magnetic resonance scanning facility to be sited on the SARMC campus located in Boise, Idaho. MRIA originally consisted of local physicians (DMR) and area hospitals (including SARMC, Mednow, Inc., and HCA of Idaho, Inc.) working collegially to provide MRI services to the Treasure Valley. After SARMC withdrew wrongfully from MRIA in April 2004, the partnership has continued to offer services through its two operating entities, MRICI and MRI Mobile. MRICI is The MRI Center of Idaho—a limited partnership of which MRIA is the general partner—that operates a magnetic resonance scanner. (MRICI is the operational name for MRI Limited, an Idaho limited partnership.)

<sup>2</sup> SARG/GSR is a group of radiologists under contract with St. Alphonsus Regional Medical Center ("SARMC") to provide exclusive diagnostic medical imaging procedures and examinations at SARMC. At some point in the 1990's, SARG changed its name to GSR. The radiologists at SARG are, for purposes relevant to this motion, the same radiologists comprising GSR and ICR.

owed to MRJA/MRICI as a fiduciary when it engaged in a series of actions calculated to harm MRJA/MRICI.

Whether or not a fiduciary relationship exists—and whether or not a party has breached its fiduciary duties—are questions of fact for a jury. A fiduciary relationship may arise in any case “where there has been a special confidence imposed in another who, in equity and good conscience, is bound to act in good faith and with due regard to the interest of one reposing the confidence.” *Stearns v. Williams*, 72 Idaho 276, 288, 240 P.2d 833, 840-41 (1952). Under circumstances “that an unfair advantage may be taken and where one is bound to act for the benefit of another,” a party like SARG/GSR “can take no advantage to [itself].”

The following facts (discussed in detail below) indicate that a fiduciary relationship existed between SARG/GSR and MRJA/MRICI. As the exclusive professional component provider, SARG/GSR had power to influence and control over MRJA/MRICI’s business. Due to the power that SARG/GSR had over it, MRJA/MRICI placed special trust in SARG/GSR that it would pursue MRJA/MRICI’s interests. SARG/GSR and MRJA/MRICI also shared an extremely close, cooperative, and long-term relationship. SARG/GSR was heavily involved in the operation of MRJA/MRICI. Through its position, SARG/GSR obtained sensitive information regarding MRJA/MRICI. In several years of dealings, SARG/GSR and MRJA/MRICI pursued the interests of the other party.

Similarly, the following facts indicate that SARG/GSR breached the fiduciary duties it owed to MRJA/MRICI. SARG/GSR exploited its position power over MRJA/MRICI as the designated exclusive reader of MRJA/MRICI images to benefit its

own business and damage MRIA/MRICI. SARG/GSR radiologists reduced the quality of their coverage at the MRIA/MRICI lab, reduced care for patients imaged at MRIA/MRICI, and reduced hours of service as means of gaining a competitive advantage over MRIA/MRICI. SARG/GSR radiologists also insinuated to the referring physician community that the quality of images taken at IMI was superior to image quality of MRIA/MRICI, which is false. SARG/GSR radiologists also directed patients who had been referred to MRIA/MRICI for treatment to IMI for “better service” or “better treatment” which was false. Finally, SARG/GSR radiologists misled the referring physician community to believe that images taken at MRIA/MRICI were not viewable by SARMC’s D.R.

In light of these facts, summary judgment on MRIA/MRICI’s fiduciary duty claim is not appropriate.

## **II. FACTUAL BACKGROUND**

### **A. A Fiduciary Relationship Was Formed Between SARG/GSR and MRIA**

#### **i. SARG/GSR’s Exclusive Relationship With MRIA/MRICI**

1. SARG/GSR was a group of radiologists under contract with SARMC to read the radiological images for SARMC, including MRI images taken at MRIA/MRICI. (See Affidavit of G.Rey Reinhardt in Support of Memorandum in Support of MRIA’s Motion to Amend to Seek Punitive Damages (“Reinhardt Aff.”) filed on December 20, 2006, at ¶ 4 and Ex. C at 171:17-172:17.)
2. While MRIA provided the “technical component” of the evaluation (*i.e.*, the magnetic resonance images), SARG/GSR provided the “professional component” (*i.e.*, interpretation of the images).



3. In 1997, SARG/GSR executed an exclusive services agreement (“Exclusive Services Agreement”) under which SARG/GSR promised to provide a certain level of care in exchange for the exclusive right to read images on the SARMC campus. (*See id.* at ¶¶ 5, 6, and 26, Ex. D, Exhibit E at 546:4-547:4, and Ex. Y.)

4. This Exclusive Services Agreement guaranteed SARG/GSR the ability to be the exclusive radiology group permitted to read images taken by MRJA/MRJC on the SARMC campus. (*See Id.*, at Ex. D, Sections 8.1 and 1.1.1 (“Saint Alphonsus hereby agrees....the Group shall....have the exclusive authority and responsibility for supervision, performance and interpretation of all diagnostic and/or therapeutic medical imaging procedures and examinations...identified in paragraph 1.1.1.”) *See also id.* at ¶ 4 and Ex. C at 171:17-172:17 (“Q:...would it be fair to say that this reference to exclusivity meant that the radiologists had the exclusive contract for reading scans at the medical center, and the breast care center and at MRJA? A: Yes.”).)

5. Due to the 1997 Services Agreement between SARMC and SARG/GSR, MRJA/MRJC had no input or influence as to who would provide the professional component for the MRI images. (*Id.*)

6. Consequently, MRJA/MRJC placed considerable trust in, relied heavily on, and worked closely with SARG/GSR. (*See id.*, at Ex. K, at 68:4-11 (referring to MRJC as SARG/GSR’s “imaging partners”).)

7. Statements made by members of both GSR and SARMC in private meetings further demonstrate the exclusive role played by GSR at MRJA/MRJC pursuant to the Exclusive Services Agreement.

8. For example, in a September 19, 2000 Radiology Executive Committee meeting, members of GSR complained to SARMC that they believed radiologists from outside their group were being permitted by MRJA/MRJA to read images at MRJA/MRICI and that such conduct was impermissible:

Dr. Giles is also trying to read cases. Cindy stated that the only ones who are allowed to read are those that are on Medical Staff. Since Dr. Giles is no longer part of the Group, he no longer has privileges. Dr. Polk suggested sending a letter to Dr. Giles and to the MRI Board stating that he is no longer party of the Medical Staff.

(See Reinhardt Aff. at ¶ 7 and Ex. F at p. 2.)

9. Echoing this sentiment, the COO for SARMC announced to GSR in an August 21, 2000 Radiology Executive Committee meeting that “the MRI Board could not bind the Hospital to specify who can read.” (See Affidavit of G.Rey Reinhardt in Support of MRJA’s Reply Briefs in Support of Motion to Amend to Seek Punitive Damages (“Reinhardt Aff. #2”) filed concurrently herewith at ¶ 4 and Ex. C.)

10. Thus, under the Exclusive Services Agreement between SARMC and GSR, MRJA/MRICI was beholden to GSR.

11. Even after IMI opened in the fall of 1999—when the radiologists forming SARG/GSR became direct competitors of MRJA/MRICI—GSR did not relinquish its position of power over MRJA/MRICI. Instead, GSR insisted to SARMC that GSR continue to be the exclusive radiology group for MRJA/MRICI. (See Reinhardt Aff. at ¶¶ 7 and Exhibit F. See also Reinhardt Aff. #2 at ¶ 4 and Ex. C.)

12. The fact that GSR held a position of power over MRJA (the fact that MRJA placed special trust in GSR to pursue MRJA/MRICI’s financial interests) is illustrated by the actions taken by GSR after IMI opened. By remaining the exclusive

radiology group for MRJA/MRICI (its competitor), GSR was left in the unique and powerful position of drastically influencing the success or failure of MRJA/MRICI. Shortly after opening IMI in competition with MRJA/MRICI in 1999, GSR maliciously and deliberately began reducing the quality of care provided to MRICI. (See Reinhardt Aff. at ¶¶ 5, 6, 7, 26 and 42, Ex. D, Ex. E at 367:7-13, Ex. F, Ex. Y and Ex. OO.)

13. This alarming reduction in care by GSR, (which had the ability not only to hurt MRJA/MRICI financially, but to reduce the quality of care being received by MRJA/MRICI's patients), was memorialized in a January 4, 2000 letter from MRJA/MRICI to SARMC stating that it could not allow SARG/GSR to compromise the high standards of patient care offered by MRJA/MRICI simply because SARG/GSR had become competitors of MRJA/MRICI through the opening of IMI:

The time has come for SARMC to insist on and provide full, supportive radiologic coverage of the lab at historical levels of professionalism and service....The highest standard of care for patients is essential and includes having radiologists on site to supervise studies as needed. We now view as a necessity SARMC's providing the lab with full, supportive, traditional radiologist coverage or permitting the MRI Center of Idaho to contract directly with radiologists as a fiduciary responsibility of SARMC to its other general and limited partners.

(See Reinhardt Aff. at ¶ 26 and Ex. Y.)

14. MRJA/MRICI's counsel also sent a letter to SARMC during this time, stating in his letter that if an agreement could not be reached between MRI Center and GSR/SARG that an exclusive agreement would allow GSR/SARG to harm MRI Center:

In the absence of a [mutual partnership agreement] between the MRI Center of Idaho and SARG, SARMC would breach its fiduciary responsibility as a General Partner if it were to give an exclusive contract to SARG to read MRI scans at the MRI Center of Idaho. SARG is clearly competing with the Center, and an exclusive contract would permit SARG to harm the Center further.

(*See Id.* at ¶ 27 and Ex. Z.)

15. Despite the reduced quality of care and warnings of harm coming to MRIA/MRICI's business, MRIA/MRICI was not permitted to hire different radiologists to service MRIA/MRICI.

**ii. SARG/GSR's Extremely Close, Cooperative, and Long-Term Relationship With MRIA/MRICI**

16. SARG/GSR collaborated closely with MRIA/MRICI in a variety of ways to provide patient care. (*See* Affidavit of David Giles, M.D., ("Giles Affidavit") at ¶ 6; *see also* Affidavit of Julie Hopkins ("Hopkins Aff.") at ¶¶ 4-7.)

17. "There was an oral agreement between SARG/GSR and MRIA/MRICI to the effect that SARG/GSR would provide services to MRIA/MRICI above and beyond reading or interpreting radiological images. This oral agreement was founded on a common understanding that patient care was always the first priority—and that SARG/GSR would act in a manner to continually strengthen and improve, to the extent possible, MRIA/MRICI's quality of patient care." (Giles Aff. at ¶ 7.)

18. "SARG/GSR provided general professional guidance to MRIA/MRICI regarding the establishment and implementation of new or additional patient care procedures." (*Id.* at ¶ 8.)

19. "SARG/GSR radiologists provided prescriptions for scans taken at MRIA/MRICI. Many prescriptions are routine. However, some prescriptions involved detailed instructions to MRIA/MRICI technologists established by SARG/GSR radiologists. Also, MRIA/MRICI technologists consulted with SARG/GSR radiologists in the event that something unusual presented itself during the MRI screening process." (*Id.* at ¶ 9; *see also* Hopkins Aff. at ¶¶ 4-7.)

20. “SARG/GSR played an important role in assuring the quality of the services provided by MRIA/MRICI because SARG/GSR was responsible to address any errors or omissions made by MRIA/MRICI technologists. Also, SARG/GSR was obligated by contract to report to SARMC regarding the patient care and services provided at MRIA/MRICI.” (Giles Aff. at ¶ 10.)

21. “SARG/GSR provided extensive advice to MRIA/MRICI when MRIA/MRICI decided to add a second MRI system at MRICI.” (*Id.* at ¶ 11.)

22. “Both Dr. James Prochaska and [Dr. Giles] were general partners in both MRIA/MRICI and SARG/GSR. This arrangement facilitated the close and cooperative professional relationship shared by MRIA/MRICI and SARG/GSR. Specifically, through this arrangement, SARG/GSR obtained access to sensitive operational information regarding MRIA/MRICI that permitted MRIA/MRICI and SARG/GSR to work together to successfully provide patient care.” (*Id.* at ¶ 12.)

23. “SARG/GSR also had access to MRIA/MRICI’s sensitive patient information, including numbers of patients served and referring physician information.” (*Id.* at ¶ 13.)

24. “MRIA/MRICI would have never provided operational and patient information to an ordinary competitor. On the contrary, MRIA/MRICI only granted SARG/GSR access to such information pursuant to a common understanding that MRIA/MRICI and SARG/GSR were partners in a sense cooperating in the management of a unitary patient care enterprise.” (*Id.* at ¶ 14.)

25. “In the late 1990s—in negotiations regarding an offer to sell to SARG/GSR an interest in MRIA/MRICI—SARG/GSR obtained additional sensitive and

confidential information regarding MRJA/MRJC, including detailed financial information.” (*Id.* at ¶ 15.)

26. “SARG/GSR and MRJA/MRJC worked together in a close and cooperative professional relationship, and MRJA/MRJC placed a high degree of trust and confidence in SARG/GSR and the radiologists that comprised SARG/GSR.” (*Id.* at ¶ 16.)

27. “The trust and confidence MRJA/MRJC placed in SARG/GSR was based on many years of dealings in which SARG/GSR did not abuse or betray the trust or confidence of MRJA/MRJC. On the contrary, for many years SARG/GSR and MRJA/MRJC each pursued and protected the best interests of the other party.” (*Id.* at ¶ 17.)

28. As part of the close relationship between SARG/GSR and MRJA/MRJC, a member of SARG/GSR was appointed to serve as the medical director for MRJC. Responsibilities of the Medical Director for MRJC included oversight, consultation, advice, and coordination of physician-level concerns with all day-to-day operations and long-term policy decisions at MRJC. Additionally, the Medical Director was responsible for assuring proper medical policies and procedures were implemented and established at MRI Center. (*See Hopkins Aff.* at ¶ 6.)

29. Finally, it is notable that the close working relationship between SARG/GSR and MRJA/MRJC, coupled with the fact that GSR was the exclusive radiology group permitted to read images for MRJA/MRJC, caused GSR to view itself as a “partner” of MRJA/MRJC. This fact was confirmed by Dr. Tim Hall during his deposition, when he stated that in addition to the hospital being viewed as an imaging

partner, he also viewed MRIA/MRICI as an imaging partner. (*See* Reinhardt Aff. at ¶12 and Ex. K, at 68:4-11.)

30. SARG/GSR radiologists took other actions that indicate they formed part of an extremely close, partnership-like relationship with MRIA/MRICI. For example, SARG/GSR radiologists used letterhead that listed their names under the heading “MRI Center of Idaho.” (*See* Affidavit of Shawn P. Bailey (“Bailey Aff”) at ¶ 2.)

**B. SARG/GSR Breached the Fiduciary Duties It Owed to MRIA**

31. SARG/GSR breached its fiduciary duties to MRIA/MRICI by engaging in a series of actions calculated to harm MRIA/MRICI. Soon after IMI opened in the fall of 1999, SARG/GSR began to drastically reduce the quality of its services to MRIA/MRICI, notwithstanding its role as the exclusive radiology group for MRIA/MRICI. (*See* Reinhardt Aff. at ¶¶ 5, 6, 7 and 26, Ex. D, Ex. E at 367:7-13, Ex. F and Ex. Y.)

32. Concerned about the poor quality of service being offered by SARG/GSR to MRIA/MRICI, and the effect such conduct could have on patient care, MRIA/MRICI partners wrote a letter to SARMC on January 4, 2000 expressing concern about the declining performance of SARG/GSR at MRIA/MRICI. (*Id.* at Ex. Y.)

33. MRIA/MRICI informed SARMC that it could not allow SARG/GSR to compromise the high standards of patient care offered by MRIA/MRICI simply because SARG/GSR had become competitors of MRIA/MRICI through the opening of IMI. If SARG/GSR could not provide the necessary levels of care, MRIA/MRICI stated, SARMC had a fiduciary duty to permit MRIA/MRICI to hire a different group of radiologists to service MRIA/MRICI. (*Id.*)

34. SARG/GSR also breached its fiduciary duties by reducing hours of SARG/GSR service at MRJA/MRJC. The profitability of an MRI imaging center is directly correlated to its hours of operation. (*See id.*, Ex. T, at 79:4-12.) Accordingly, SARG/GSR routinely increased their hours of operation at IMI as a method of increasing IMI's revenues. (*See id.*; *see also id.*, Ex. SS (support at T at 79:4-14).)

35. SARG/GSR knew that decreasing the hours of operation at an MRI imaging center, like MRJA/MRJC, would reduce profitability. Thus, after the opening of IMI, SARG/GSR cut back its hours of service at MRJA/MRJC. (*See id.*, Ex. OO.) As the exclusive radiology group for MRJA/MRJC, SARG/GSR knew the negative financial impact this reduction in hours would have on MRJA/MRJC. MRJA/MRJC was unable to push back because of the exclusive services agreement its partner, SARMC, had executed with SARG/GSR. (*See id.*, at Ex. Y.)

36. SARG/GSR also breached its fiduciary duties by misrepresenting and disparaging the technological capabilities of MRJA/MRJC. Knowing the importance of technology to the success of an imaging center, SARG/GSR circulated a letter to referring physician stating (falsely) that MRJA/MRJC was going to be removed from the DR system and that, going forward, only IMI would offer images on the DR system. (*See id.* at ¶¶ 9 and 43, Ex. H at 180:14-182:19, Ex. PP.) SARG/GSR later made a half-hearted retraction of its false statement after MRJA/MRJC threatened legal action. (*Id.* at ¶¶ 9 and 44, Ex. H at 185:25-186:7, Ex. QQ.)

37. SARG/GSR radiologists also wrongfully disparaged the quality of both the service rendered and the images generated at MRJA/MRJC.



38. Finally, SARG/GSR breached its fiduciary duties by encouraging SARMC to withdraw from MRIA/MRICI through serious threats. SARG/GSR threatened that unless SARMC started acting like a partner in IMI by withdrawing from MRIA/MRICI (in violation of the MRIA Partnership Agreement), SARG/GSR would stop reading images at MRIA/MRICI and thereby significantly reduce the income received by SARMC as a partner in MRIA/MRICI. (*See id.* at ¶¶ 10 and 37, Ex. I at 193:9-194:6 and Ex. JJ, p. 2.)

39. This threat is captured in a presentation made by SARMC in October 30, 2003: “GSR has stated that, if a solution to the current MRICI ownership dilemma cannot be found, it may no longer do the reads for the center, dramatically reducing its profitability and value.” (*See id.* at Ex. JJ, p. 2.)

40. SARG/GSR has since admitted during discovery that its threat to SARMC was in fact intended to “motivate” SARMC to leave MRIA/MRICI and that SARG/GSR was “relieved” when it subsequently learned that SARMC had wrongfully withdrawn from MRIA/MRICI. (*See id.* at ¶ 16 and Ex. O at 90:20-92:13.)

41. Consistent with these facts, Dr. Giles stated that: (1) SARG/GSR exploited its position as SARMC’s affiliate to harm MRIA/MRICI, (2) SARG/GSR took advantage of the inside information regarding MRIA/MRICI that it gained over years of working closely with MRIA/MRICI; (3) SARG/GSR reduced the quality of service it provided to MRIA/MRICI; (4) SARG/GSR reduced the hours of service it provided to MRIA/MRICI; and (5) SARG/GSR disparaged the patient service MRIA/MRICI provided, the equipment MRIA/MRICI used, and the quality of the images MRIA/MRICI produced. (*See Giles Affidavit at ¶¶ 20-25.*)

42. SARG/GSR disparaged the quality of the equipment MRJA/MRJC used and the quality of the images that MRJA/MRJC produced both in communications to SARMC and in individual MRI readings. (*See* Bailey Aff. at ¶¶ 2-3.)

### **III. DISCUSSION**

This Court should deny SARG/GSR's motion for partial summary judgment. Genuine disputes of material fact remain to be resolved regarding: (1) the existence of a confidential or informal fiduciary relationship between SARG/GSR and MRJA/MRJC, and (2) whether SARG/GSR breached its fiduciary duties to MRJA/MRJC.

#### **A. Summary Judgment Standard**

Summary judgment should not be granted unless "the pleadings, affidavits, and discovery documents on file with the court, read in a light most favorable to the nonmoving party, demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law." *Thomas v. Medical Center Physicians, P.A.*, 138 Idaho 200, 205, 61 P.3d 557, 562 (2002) (citing I.R.C.P. 56(c)). "In making this determination all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion." *Id.* "When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions." *Id.*

"The burden of proving the absence of material facts is upon the moving party. The adverse party, however, may not rest upon the mere allegations or denials of his pleadings, but must respond, by affidavits or as otherwise provided in this rule, setting forth specific facts showing that there is a genuine issue for trial." *Id.* (citing I.R.C.P.

56(e)). A moving party is only entitled to summary judgment if the “nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial.” *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 531, 887 P.2d 1034, 1038 (1994) (citing *Celotex v. Catrett*, 477 U.S. 317, 323 (1986)).

SARG/GSR relies heavily upon this Court’s ruling on MRJA/MRICI’s motion to amend the pleadings to assert claims for punitive damages. Of course, the standards applicable to the present motion and MRJA/MRICI’s punitive damages motion are radically different. This Court was obligated to weigh evidence to rule on MRJA/MRICI’s punitive damages motion. *See* I.C. § 6-1604(2) (“The court shall allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that ...”) In contrast, the Court must not weigh evidence when addressing SARG/GSR’s motion for partial summary judgment. Because genuine disputes of material fact remain to be resolved, this Court should deny SARG/GSR’s motion.

#### **B. Idaho Law Recognizes ‘Confidential’ or Informal Fiduciary Relationships**

“To establish a claim for breach of fiduciary duty, plaintiff must establish that defendants owed plaintiff a fiduciary duty and that the fiduciary duty was breached.” *Tolley v. THI Co.*, 140 Idaho 253, 261, 92 P.3d 503, 511 (2004). “[A] claim for a breach of a fiduciary duty is a negligence action in which the duty to act is created by the relationship between the parties.” *Jones v. Runft, Leroy, Coffin & Matthews, Chtd.*, 125 Idaho 607, 614, 873 P.2d 861, 868 (1994).

The existence of a fiduciary relationship is a question of fact. *See, e.g., In re Estate of Farr*, 274 Kan. 51, 72, 49 P.3d 415, 431 (2002) (“whether a fiduciary or

confidential relationship exists is a question of fact which must be determined by the facts of the case”); *Matlock v. Simpson*, 902 S.W.2d 384, 385 (Tenn.1995) (“the issue of whether or not a confidential relationship existed, if not admitted, [is] a question of fact”); *Ruebsamen v. Maddocks*, 340 A.2d 31, 35 (Me.1975) (“The existence of a confidential [or fiduciary] relationship remains a question of fact and need not be imposed by law”); *Taylor v. Klahm*, 40 Mich.App 255, 264; 198 NW2d 715 (1972). (“The existence of a confidential relationship or fiduciary relationship is a question of fact”); *Kudokas v. Balkus*, 26 Cal.App.3d 744, 103 Cal.Rptr. 318, 321 (1972) (“Existence of a confidential or fiduciary relationship depends on the circumstances of each case and is a question for the fact trier”).

Whether a party has breached its fiduciary duties is also a fact question for the jury. *See R.G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 413-14, 797 P.2d 117, 121-22 (1990) (citing *Western Alliance Corp. v. Western Reliance Corp.*, 57 Or.App. 263, 643 P.2d 1382 (1982); *Musselman v. Southwinds Realty*, 146 Ariz. 173, 704 P.2d 814 (App.1985)) (“whether a fiduciary duty has been breached is a question of fact for the jury and not for the trial court on motion for summary judgment \* \* \* That the matter was not appropriate for summary judgment is demonstrated by the words of the trial court: ‘[Nelson] may arguably have breached a fiduciary duty to [Hebener].’ Such ‘arguable’ breach renders the issue manifestly unfit for resolution by summary judgment, particularly in light of the rule of law that whether a fiduciary duty has been breached is a question of fact for the jury”).

In the venerable case of *Stearns v. Williams*, 72 Idaho 276, 240 P.2d 833 (1952), the Idaho Supreme Court described in detail how a “confidential” or informal fiduciary relationship may be formed. *Stearns* explained:

A fiduciary relationship does not depend upon some technical relation created by or defined in law, but it exists in cases where there has been a special confidence imposed in another who, in equity and good conscience, is bound to act in good faith and with due regard to the interest of one reposing the confidence.

*Id.* at 288, 840-41. Elaborating further, *Stearns* continued:

Oftentimes the terms ‘fiduciary relation’ and ‘confidential relation’ are used interchangeably[.] [T]he confidential relationship which is protected in equity is synonymous with fiduciary relationship[.] [I]t exists whether the relationship is technically fiduciary or merely informal, whenever one trusts in and relies on the other[.] In respect to either confidential or fiduciary relationship, it is possible that an unfair advantage may be taken and where one is bound to act for the benefit of another, he can take no advantage to himself; no precise language can define the limits of such relationships[.]

*Id.* at 288, 841 (citations omitted). SARG/GSR labor mightily in a futile attempt to demonstrate that the rule in *Stearns* is limited to an extremely narrow set of facts.

SARG/GSR cites cases<sup>3</sup> that provide a non-exclusive list of examples of relationships that may give rise to fiduciary duties. SARG/GSR attempts to extrapolate from this list a rule that directly conflicts with the language of *Stearns* (e.g., “[a] fiduciary relationship does not depend upon some technical relation created by or defined in law”). However, the cases that SARG/GSR cites did not reverse, distinguish, or limit *Stearns* in any way. SARG/GSR also cites cases involving routine arms-length transactions.<sup>4</sup> Of course, the facts before the court indicate that SARG/GSR and MRJA/MRICI cooperated

---

<sup>3</sup> See, e.g., *Mitchell v. Barendregt*, 120 Idaho 837, 820 P.2d 707 (Idaho App. 1991).

<sup>4</sup> See, e.g., *Wade Baker & Sons Farms v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints*, 136 Idaho 922, 42 P.3d 715 (Idaho App. 2002).

closely for years in a manner that goes far beyond a routine arms-length transaction. The cases SARG/GSR simply do not apply to the case at bar.

SARG/GSR's discussion of *Podolan v. Idaho Legal Aid Services, Inc.*, 123 Idaho 937, 854 P.2d 280 (Idaho App. 1993), is also misleading. *Podolan's* extremely brief discussion of fiduciary duties obviously did not address the principles discussed in *Stearns*. See 123 Idaho at 946, 854 P.2d at 289. SARG/GSR's characterization of *Country Cove Development, Inc. v. May*, \_\_ Idaho \_\_, 150 P.3d 288 (2006), is similarly mistaken. *Country Cove* addressed circumstances in which a fiduciary relationship had ended; *Country Cove* did not simply rule, as SARG/GSR asserts, "that fiduciary relationships are not easily established."

Contrary to SARG/GSR's arguments, the principles discussed in *Stearns* are widely acknowledged and broadly applicable. For example, *Texas Bank & Trust Co. v. Moore*, 595 S.W.2d 502, 507 (Tex. 1980), ruled that a confidential relationship can arise in "all cases in which influence has been acquired and abused, in which confidence has been reposed and betrayed, and the origin of the confidence is immaterial, and may be moral, social, domestic, or merely personal."<sup>5</sup> Dealings between parties may create a confidential relationship over time. See *Ins. Co. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998) (stating that "confidential relationships may arise when the parties have dealt with each other in such a manner for a long period of time that one party is justified

---

<sup>5</sup> See also *H-B Ltd. P'ship v. Wimmer*, 257 S.E.2d 770, 773 (Va. 1979) ("A fiduciary relationship exists in all cases when special confidence has been reposed in one who in equity and good conscience is bound to act in good faith and with due regard for the interests of the one reposing the confidence."); *In re Estate of Scott*, 316 A.2d 883, 885 (Pa. 1974) ("The concept of a confidential relationship cannot be reduced to a catalogue of specific circumstances, invariably falling to the left or right of a definitional line.... The essence of such a relationship is trust and reliance on one side, and a corresponding opportunity to abuse that trust for personal gain on the other."); *Young v. Kaye*, 279 A.2d 759, 763 (Pa. 1971) (ruling that a confidential relationship "exist[s] whenever the relative position[s] of the parties is such that one has power and means to take advantage of or exercise undue influence over the other").

in expecting the other to act in its best interest"). Moreover, inequality between the parties or vulnerability on the part of one of the parties is also a significant factor in analyzing whether a fiduciary relationship has been formed. *See Union State Bank v. Woell*, 434 N.W.2d 712, 721 (N.D. 1989) (stating that the "party reposing the confidence must be in a position of inequality, dependence, weakness, or lack of knowledge"); *Lowrance v. Patton*, 710 P.2d 108, 111 (Okla. 1985) (concluding that a fiduciary relationship exists where "there is confidence reposed on one side and resulting domination and influence on the other").

The Idaho Supreme Court applied the principles discussed in *Stearns in Idaho First Nat. Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 824 P.2d 841 (1991). *Bliss Valley* ruled:

A fiduciary relationship imparts a position of peculiar confidence placed by one individual in another. A fiduciary is a person with a duty to act primarily for the benefit of another. A fiduciary is in a position to have and exercise, and does have and exercise influence over another. A fiduciary relationship implies a condition of superiority of one of the parties over the other. Generally, in a fiduciary relationship, the property, interest or authority of the other is placed in the charge of the fiduciary.

*Id.* at 277, 852 (emphasis omitted) (quoting *Denison State Bank v. Madeira*, 230 Kan. 684, 640 P.2d 1235, 1241-42 (1982)). *Bliss Valley* likewise ruled:

The term fiduciary implies that one party is in a superior position to the other and that such a position enables him to exercise influence over one who reposes special trust and confidence in him.... As a general rule, mere respect for another's judgment or trust in this character is usually not sufficient to establish such a relationship. The facts and circumstances must indicate that the one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party.

121 Idaho 278, 824 P.2d 853 (emphasis omitted) (quoting *Burwell v. South Carolina Nat. Bank*, 288 S.C. 34, 340 S.E.2d 786, 790 (1986)).

*Bliss Valley* ultimately concluded that the defendant did not owe fiduciary duties to the plaintiff in that case. Certain facts were particularly important to *Bliss Valley*'s fiduciary duty analysis. For example, *Bliss Valley* observed that the defendant in question did not have superior knowledge as compared to the plaintiff. *Id.* at 281-82, 856-57. Likewise, *Bliss Valley* ruled that both the plaintiff and defendant "hoped to monetarily benefit by the .... transaction. They were bargaining at arm's length ... and each was looking out after its own interest. Each was competently represented by a qualified representative who was fully capable of protecting the interests of their parties." *Id.* at 282, 857.

SARG/GSR owed fiduciary duties to MRJA/MRICI. SARG/GSR and MRJA/MRICI were not on an equal footing. On the contrary, as the following discussion demonstrates, MRJA/MRICI and SARG/GSR maintained an extremely close and cooperative professional relationship for a number of years. Under these circumstances, MRJA/MRICI was vulnerable to the control and domination of SARG/GSR. Thus, MRJA/MRICI placed special trust in SARG/GSR to protect and pursue MRJA/MRICI's interests. Instead, SARG/GSR exploited MRJA/MRICI's vulnerability in a variety of ways and thus violated its fiduciary duties.

**C. MRJA and SARG/GSR Had a 'Confidential' or Informal Fiduciary Relationship**

Genuine disputes of material fact regarding the existence of a confidential relationship between SARG/GSR and MRJA/MRICI remain to be resolved. Thus, this Court should reject SARG/GSR's motion for partial summary judgment.

As detailed above, SARG/GSR's exclusive relationship with MRJA/MRICI gave it significant power over MRJA/MRICI. SARG/GSR had the power to deprive



MRIA/MRICI. Thus, this Court should deny SARG/GSR's motion for partial summary judgment.

#### **D. SARG/GSR Breached the Fiduciary Duties It Owed to MRIA**

SARG/GSR breached its fiduciary duties to MRIA/MRICI when it took several actions calculated to harm MRIA/MRICI. Discussed in detail above, these actions include: (1) taking advantage of sensitive information it obtained from MRIA/MRICI through its long course of close dealings with MRIA/MRICI, (2) reducing the quality of service provided at MRIA/MRICI, (3) reducing the hours of service at MRIA/MRICI, and (4) disparaging the patient service provided by MRIA/MRICI, the technology used by MRIA/MRICI, and the images generated by MRIA/MRICI. At a minimum, genuine disputes of material fact regarding these issues remain to be resolved at trial.

Accordingly, this Court should reject SARG/GSR's motion for partial summary judgment.

#### **IV. CONCLUSION**

For all of the foregoing reasons, this Court should deny SARG/GSR's motion for partial summary judgment. Because factual disputes remain to be resolved regarding both the existence of a fiduciary relationship between the parties—and whether SARG/GSR breached its fiduciary duties to MRIA/MRICI, summary judgment would not be appropriate.

///

///

///

///

DATED this 3 day of April, 2007.

GREENER BANDUCCI SHOEMAKER P.A.

A handwritten signature in black ink, appearing to read 'Tom Gordon', is written over a horizontal line.

Thomas A. Banducci  
G.Rey Reinhardt  
Daniel J. Gordon  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3 day of April, 2007, a true and correct copy of the within and foregoing instrument was served upon:

Warren E. Jones  
EBERLE BERLIN  
300 N. 6th Street, 2nd Floor  
Post Office Box 1368  
Boise, ID 83701

[Attorneys for Third-Party Defendants]

- ☐ U.S. Mail
- ☐ Facsimile (208) 344-8542
- ☒ Hand Delivery
- ☐ Overnight Delivery

Rodney R. Saetrum  
SAETRUM LAW OFFICES  
101 South Capitol Boulevard  
Suite 1800  
Boise, ID 83702

[Attorneys for Third-Party Defendants]

- ☐ U.S. Mail
- ☐ Facsimile (208) 336-0448
- ☒ Hand Delivery
- ☐ Overnight Delivery

Jack S. Gjording  
GJORDING & FOUSER  
509 West Hayes  
Post Office Box 2837  
Boise, ID 83701

[Attorneys for Plaintiff/Counter-Defendants]

- ☐ U.S. Mail
- ☐ Facsimile (208) 336-9177
- ☒ Hand Delivery
- ☐ Overnight Delivery

Patrick J. Miller  
GIVENS PURSLEY, LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, Idaho 83701-2720

[Attorneys for Plaintiff/Counter-Defendants]

- ☐ U.S. Mail
- ☐ Facsimile (208) 388-1300
- ☒ Hand Delivery
- ☐ Overnight Delivery



Thomas A. Banducci  
G.Rey Reinhardt  
Daniel J. Gordon

Warren E. Jones, ISB No. 1193  
Neil D. McFeeley, ISB No. 3564  
EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD  
300 North Sixth Street  
Post Office Box 1368  
Boise, Idaho 83701  
Telephone: (208) 344-8535  
Facsimile: (208) 344-8542

NO. \_\_\_\_\_  
AM. \_\_\_\_\_  
APR 10 2007  
J. DAVID NAVARRO, Clerk  
By J. EARLE  
DEPUTY

Attorneys for INTERMOUNTAIN MEDICAL IMAGING, LLC,  
GEM STATE RADIOLOGY, LLP, and  
IMAGING CENTER RADIOLOGISTS, LLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation, )

Plaintiff, )

vs. )

MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )

Defendant. )

MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )

Counterclaimant, )

vs. )

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation; SAINT )  
ALPHONSUS REGIONAL MEDICAL )  
CENTER, )

Counterdefendants. )

Case No. CV OC 0408219D

**THIRD PARTY DEFENDANTS'  
RESPONSE TO MRIA'S OPPOSITION  
TO MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON BREACH  
OF FIDUCIARY DUTY CLAIM**

MRI ASSOCIATES, LLP, an Idaho limited	)
liability partnership,	)
	)
Third Party Plaintiff,	)
	)
vs.	)
	)
INTERMOUNTAIN MEDICAL IMAGING,	)
LLC, an Idaho limited liability company;	)
GEM STATE RADIOLOGY, LLP, an Idaho	)
limited liability partnership; and IMAGING	)
CENTER RADIOLOGISTS, LLP, an Idaho	)
limited liability partnership,	)
	)
Third Party Defendants.	)
	)
	)

---

COME NOW the Third Party Defendants, Intermountain Medical Imaging, LLC, Gem State Radiology, LLP, and Imaging Center Radiologists, LLP, by and through their attorneys of record, Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered and submit this response to the opposition to Third Party Defendants' Motion for Partial Summary Judgment on the breach of fiduciary duty claim filed by MRIA.

### FACTUAL BACKGROUND

MRIA once again resorts to conclusory statements not supported by evidence to try to convince the Court that there is some kernel of material fact regarding any of its causes of action against Third Party Defendants that should allow its case to go to the jury. It is clear from the Court's Memorandum Decision filed February 6, 2007, that the Court is aware of the truth. That decision constitutes the law of the case to this point, despites MRIA's best effort to disparage the Court's holdings. (MRIA's Opposition at 15). MRIA is correct that the Court was obligated to weigh evidence on the punitive damages motion; once the Court weighed the evidence, its conclusions constitute the law of the case. MIA has an obligation to submit more than conclusory assertions that an issue of material fact exists to defeat a motion for summary

judgment. *See, e.g., Northwest Bec-Corp v. Home Living Service*, 136 Idaho 835, 41 P.3d 263 (2002).

But MRIA has not come forward to present any admissible facts that would challenge the Court's factual holdings to any extent. The affidavits submitted by MRIA contain conclusory statements. They contain no supporting factual allegations. Whether Julli Hopkins or David Giles believes there was a fiduciary relationship is not relevant to this motion for summary judgment. MRIA also fails even to respond to several of the determinative legal arguments advanced by Third Party Defendants in their opening brief.

The only thing MRIA relies on to assert that there is some type of a factual issue to be determined by a jury is its argument that there is some type of a "oral contract" between GSR, the provider of professional services, and MCI Center, the provider of technical services. This, of course, is directly contrary to this Court's finding in its February 6, 2007 Memorandum Decision that GSR had "no contractual relationship with MRIA." It is also interesting that MRIA makes this argument now as a last ditch effort to prevent summary judgment when it never brought any claim for breach of this alleged oral agreement in its multiple count complaint and amended complaint against Third Party Defendants. In light of the fact that MRIA threw everything including the kitchen sink into its multi-count complaint, even if there were no or minimal evidence to support any allegations, one assumes that it would have thought to bring a breach of contract action against Third Party Defendants if it had ever previously believed there was a contract. The fact that it did not is in itself telling.

This new argument that there was an oral contract is quite interesting in light of the fact that MRIA unilaterally terminated GSR from reading outpatient images at the MRI Center. Indeed, MRI did this without even providing any notice to GSR and instead simply informed Saint Alphonsus that GSR would no longer be allowed to read outpatient images at the MRI

Center. As the Court noted, MRIA had every right to do so because there was no contract with GSR.

It is interesting to examine MRIA's argument there was an oral contract. Apparently this alleged oral contract required GSR to perform many responsibilities but MRIA/MRI Center had no obligations at all to GSR. Apparently, GSR was obligated to perform all of these "contractual" obligations for no pay. Apparently MRIA/MIA Center could determine what these "contractual" obligations were without any communications with or agreement by GSR. MRIA has not produced a single set of minutes from GSR committee meetings discussing this "contract" or GSR's agreement to enter into such contract or authorizing any of the GSR officers to obligate the company to do anything.

MRIA has also nowhere explained why this alleged oral contract by which GSR apparently obligated itself to perform all of these duties to the MRI Center without consideration does not run afoul of the federal Fraud and Abuse / Stark Acts. Those Acts preclude medical providers from performing such actions except on fair market value terms when it implicates referrals of medical services that might be paid for by Medicare or Medicaid.

The reality is that the physicians of GSR were obligated not to MRIA or MRIC but rather to the patients whose scans they were reading. The GSR physicians were obligated to their referring physicians to read images for their patients. The physicians of GSR were obligated to Saint Alphonsus under their exclusive services agreement to provide certain services to Saint Alphonsus patients whose images were read at MRI Center. In return, GSR did indeed have an exclusive right to read the scans of Saint Alphonsus inpatient and emergency patients. It had no right, exclusive or otherwise, to read outpatient images from the MRI Center, which is borne out by the fact that MRIA terminated GSR from doing exactly that, without advance notice, without notification and without compensation or severance pay for the termination.

The contractual relationships were between GSR and Saint Alphonsus, and between Saint Alphonsus and MRI Center. There was no contractual relationship between GSR and MRI Center, and any actions that were taken by GSR that tangentially or incidentally benefited MRI Center were done as a result of GSR's contractual obligation to Saint Alphonsus and as a result of GSR's legal and ethical responsibility to the patients. It is telling to observe that MRIA, after GSR allegedly began its "malicious" and "alarming" reduction in care to the Center, did not write or deal directly with GSR, but instead complained to Saint Alphonsus. (See ¶s 13 and 14 of MRI's Opposition brief.) Again, one would think that if there were this "contract" between GSR and MRI Center, MRI Center would have made its demands to the other party to the contract, not third party Saint Alphonsus.

MRIA's attorneys are now arguing for some type of oral contract simply to fend off summary judgment. Yet their clients acknowledged in minutes of April 15, 2003 signed by Jack Floyd, the CEO of MRI Center and MRI Mobile, and Dr. Curran, Chairman of the Center and MRI Mobile, that there was "no contract in place with the Gem State Radiology Group." See Exhibit 1 to McFeeley Affidavit. (*emphasis added*) The entire section is revealing:

Discussion continued and evolved to the fact there is no contract in place with the Gem State Radiology Group. The board felt that the exposure to the radiology group leaving without notice was a significant item and it might be in their (the board's) best interest to establish an agreement with GSRG that would incorporate a written termination clause giving either party the right to terminate with a set number of months notice of termination. It was agreed that the termination clause was a critical point and the Board as a group reiterated its desire for its St. Al's members to arrange for a discussion with GSRG and return with a perspective on the need for such an agreement/contract or an assurance from St. AL's that such an agreement would not be necessary. Randy Hudspeth volunteered that he will speak with Ken Fry and Sandra Bruce on this issue and report back.

This admission would seem to determine the issue.

MRIA's theory appears to be to assert half-truths in hopes that this will somehow create an issue of fact. For example, it fails to note that the exclusive services agreement between GSR



and Saint Alphonsus only applies to Saint Alphonsus inpatients and emergency department patients, and not to outpatients whose scans are read at the Center. It fails to note that any obligation GSR had to report on services provided at the Center was an obligation to Saint Alphonsus. It fails to note that obviously GSR as the radiologist group reading the scans taken at MRI Center would have its own independent knowledge of the patients and of the referring physicians. It fails to note that a GSR member served as medical director for the Department of Radiology as a result of the Saint Alphonsus' contract with GSR. It fails to note that, as specifically explained in Third Party Defendants' opening brief, Dr. Hall's reference to "partner" was explained by Dr. Hall to mean simply those entities which were involved in MRI scanning at the Center, including the professional component, the technical component and the facility (the Hospital itself).

MRIA's half-truths are particularly apparent in its representation of what testimony occurred at depositions. For example, in paragraph 4 of MRI's opposition, there is a reference to whether the exclusivity with Saint Alphonsus meant that GSR had the exclusive contract for reading all scans at the Medical Center. The deponent answered "yes" and explained that this meant the exclusive right to read the scans of Hospital patients at the Center. In paragraph 40 MRIA tries to construe the deposition testimony to show that GSR threatened Saint Alphonsus to "motivate" it to leave MRIA and that GSR was "relieved" when it learned that Saint Alphonsus had withdrawn from MRIA. This again ignores the rest of the testimony that GSR's desire to "motivate" Saint Alphonsus was only to get a decision whether the tripartite relationship would continue, and that GSR was "relieved" only because a decision had actually been made after the parties had been negotiating for five years.

## II. LEGAL ARGUMENT

### A. MRIA's Claim Must Be Dismissed Under the Statute of Limitations.

Even if the Court were to assume that any of the assertions MRIA has made up were true, this cause of action for breach of fiduciary duty still is not viable. MRIA has a dilemma: the only alleged fiduciary breaches by GSR that it could point to occurred in 1999 and 2000, and such allegations are barred by the relevant statute of limitations.

As discussed in Third Party Defendants' Opening Brief, the appropriate statute of limitations for a breach of fiduciary duty claim is Idaho Code § 5-224, as there is no specific statute of limitations. *See Jones v. Kootenai County Title Insurance*, 125 Idaho 607, 617 873 P.2d 861, 868. Thus, any lawsuit on this cause of action must have been commenced within 4 years after the cause of action accrued. The Complaint against Third Party Defendants was filed on March 7, 2006. Thus, MRIA can not rely on any actions taken prior to March 7, 2002. Yet MRIA knew of the alleged "breach" of the alleged fiduciary duty by GSR long before then. MRIA admits this. In paragraph 11 of its Opposition brief, it states: "Even after a IMI opened in the fall of 1999--when the radiologists forming SARG/GSR became direct competitors of MRIA/MRICI--GSR did not relinquish its position of power over MRIA/MRICI." In paragraph 12 it states: "Shortly after opening IMI in competition with MRIA/MRICI in 1999, GSR maliciously and deliberately began reducing the quality of care provided to MRICI." Paragraph 13 states: "This alarming reduction in care by GSR (which had the ability not only to hurt MRIA/MRICI financially, but to reduce the quality of care being received by MRIA/MRICI's patients), was memorialized in a January 4, 2000 letter from MRIA/MRICI stating that it could not allow SARG/GSR to compromise the high standards of patient care offered by MRIA/MRICI simply because SARG/GSR had become competitors of MRIA/MRICI through the opening of IMI."

Paragraph 14 states that MRJA/MRICI counsel also sent a letter to Saint Alphonsus during the same time period demanding that Saint Alphonsus take action to control GSR and noting that "SARG is clearly competing with the Center and an exclusive contract would permit SARG to harm the Center further." MRJA then asserts that despite these warnings of harm and the reduced quality of care in 1999 and 2000, it was not permitted to hire different radiologists and thus had to continue to deal with GSR even though GSR was breaching its alleged fiduciary duties in 1999 and 2000.

Thus there is not even an issue whether MRI "should have known" but instead an admission that MRI did know as far back as 1999 and certainly by 2000 of the alleged wrongdoing by GSR. *See, e.g., DBSI/TRI v. Bender*, 130 Idaho 796, 809, 48 P.2d 151, 164 (1997) ("the district court correctly determined that the statute of limitations started to run when DBSI knew or should have known of a breach").\*

Accordingly, Third Party Defendants are entitled to dismissal of this claim as a matter of law.

**B. Third Party Defendants Are Entitled to Summary Judgment because the MRI Center Has Not Shown Damages from the Alleged Breach of Fiduciary Duty.**

Even if there were a fiduciary duty on the part of GSR, and even if GSR breached that fiduciary duty (both of which propositions GSR vehemently denies), GSR is still entitled to summary judgment because MRI Center has not shown any damages from the alleged breach.

As discussed in Third Party Defendants' opening brief, in order to establish a claim for breach of fiduciary duty a plaintiff must establish that the breach caused specific damages.

\*Similarly, if MRJA had attempted to bring a claim of breach of the alleged "oral contract," that too would have been barred by the applicable statute of limitations, Idaho Code § 5-217, which also provides for a 4 year statute of limitations on actions on oral contracts.

As discussed in Third Party Defendants' opening brief, in order to establish a claim for breach of fiduciary duty a plaintiff must establish that the breach caused specific damages. *See Tolley v. THI Co*, 140 Idaho 253, 261, 92 P.3d 503, 511 (2004). Damages must be proven with reasonable certainty and not be left to speculation. *Anderson & Nafziger v. J.T. Newcomb, Inc.*, 100 Idaho 175, 595 P.2d 709 (1979).

Not only has MRIA failed to establish damages with reasonable certainty, it has not even come forward to assert that the breach caused any damages at all, despite discovery requests and deposition questioning, or even in response to Third Party Defendants' opening brief.

Third Party Defendants have been unable to find one shred of evidence, one allegation, or even one word regarding damages in MRIA's opposition. MRIA has not responded to Third Party Defendants' argument that it has not pointed to any damages arising from the alleged breach of fiduciary duties. MRIA has not pointed to one discovery response or one bit of testimony in a deposition that even suggests that there is any proof that the alleged breach of fiduciary duty somehow caused MRIA/MRICI any damages. Third Party Defendants as the moving party are entitled to summary judgment because the "non-moving party [MRIA] failed to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial." *Thompson v. Idaho Insurance Agency, Inc.*, 126 Idaho 572, 573, 887 P.2d 1034-38 (1994). Based on MRIA/MRI Center's failure to come forward with some evidence in this regard, its cause of action must be dismissed.

### **C. There Is No Fiduciary Relationship.**

#### **1. Summary Judgment is Appropriate.**

MRIA asserts that the existence of an fiduciary relationship is a question of fact, (Opposition Brief page 15) despite Idaho law directly to the contrary. MRIA cites to non-Idaho cases and ignores Idaho case law directly on point. *See, e.g., Country Cove Development, Inc. v.*

May, 143 Idaho 595, 150 P.3d 288 (2006). In that case, which was discussed at length in Third Party Defendants' opening brief, the lower court entered a summary judgment based upon a finding that there was no fiduciary relationship. The Supreme Court found that the district court had properly granted summary judgment on the breach of fiduciary duty claim. The Supreme Court considered whether a fiduciary relationship existed and what constituted a fiduciary relationship. 150 P.3d at 294. The Court held as a matter of law that plaintiff had not established the existence of the legal relationship of a fiduciary and held that dismissal of the claim for breach of fiduciary duty was proper. *Id.* at 295.

Similarly, the Idaho Court of Appeals in *Podolan v. Idaho Legal Aid Services, Inc.*, 123 Idaho 937, 947, 854 P.2d 280, 290 (Ct. App. 1993), affirmed the district court's decision granting summary judgment on, among other causes of action, that of breach of fiduciary duty. The appellate court noted that before a fiduciary duty can be breached "there must exist a fiduciary relationship." It then found that the district court was correct in finding as a matter of law that a fiduciary relationship did not exist. The court found there was no "special relationship" as a matter of law.

In *Tolley vs. THI Co.*, 140 Idaho 253, 92 P.3d 503 (2004), the Idaho Supreme Court ruled that the district court appropriately found that the breach of fiduciary duty claim should be dismissed as a matter of law. There is thus no justification for MRIA's argument that the Court cannot decide on summary judgment whether a fiduciary relationship existed and whether it was breached.

2. There Was No Fiduciary Relationship between GSR and MRIA/MRI Center.

It is difficult to respond to MRI Center's brief because it makes no legal argument about the existence of a fiduciary relationship. Rather, it simply relies on conclusory statements by MRIA employees that MRI Center placed "significant trust and confidence" in GSR or that

GSR and MRJA/MRI Center "worked together in a close and cooperative professional relationship, and MRJA/MRICI placed a high degree of trust and confidence in GSR and the radiologists." This is the sum and substance of the fiduciary relationship argument. To accept such a claim would make every relationship a fiduciary relationship.

The contention is ridiculous. From the time GSR announced in 1998 that it was going to open its own freestanding imaging center in competition with MRI Center, MRJA knew that GSR was a competitor. Indeed, the same Dr. Giles whose affidavit MRJA relies on was the president and a member of GSR when it was formulating plans to create IMI in competition with MRI Center. He thus was on both sides of the fence until the other members of GSR requested that he resign because of this conflict of interest. Before that happened, however, Dr. Giles was conveying all of the information regarding the creation, existence and operation of IMI back to MRJA. If there was any breach of fiduciary duty in this entire situation, that breach was by David Giles and secondarily by Dr. Prochaska.

Third Party Defendants will not reiterate the arguments they made in their opening brief. The Court is well aware of the law of this State regarding fiduciary duties. The Court was absolutely right in its statement in the February 6, 2007 Memorandum Decision that there is no basis in the evidence that GSR had any fiduciary duty to MRJA or MRI Center. The record is still devoid of any evidence or even any legal theory why GSR should have had some fiduciary duty.

GSR's duties were ethical and professional duties to the patients and to the referring physicians. GSR's duties were contractual obligations to Saint Alphonsus. GSR performed those duties and MRJA/MRIC may have benefited from GSR's performance, but merely because they may have benefited does not create a fiduciary duty to them. If a landscape company has a contractual obligation to maintain an individual's house and does so, the mere fact that the

performance of those duties may increase the property values of surrounding houses does not create a fiduciary duty by the landscape company to the surrounding homeowners. Just because an attorney who has an ethical/professional/fiduciary responsibility to his client incidentally benefits a third party by doing a good job drafting a contract does not give that third party the right to argue that somehow a fiduciary relationship between it and the attorney was created by its acceptance of the incidental benefits.

In this case, there is absolutely no legal or factual basis to show the existence of a fiduciary duty between GSR and MRJA/MRI Center.

Even had there been some type of an oral contact between GSR and MRI Center, which GSR strenuously denies, this does not in and of itself create a fiduciary relationship. The parties to contracts do not automatically become fiduciaries to each other. Only in very special cases such as those cited by the Idaho Court of Appeals in *Mitchell v. Barendregt*, 120 Idaho 837, 844, 820 P.2d 707, 714 (Ct. App.1991) and noted by the Supreme Court in *Talley v. THI Co., supra*, are parties saddled with a fiduciary obligation. In the situation such as that here, where the parties involved were in competition with each other and were attempting to negotiate arms-length purchase and sale of each other's companies, it is completely unfounded to even suggest that a fiduciary relationship might exist.

### III. CONCLUSION

GSR submits that it is entitled to summary judgment on a number of bases. First of all, the alleged breaches of fiduciary duty relied on by MRJA/MRI Center are barred under the applicable statute of limitations.

Next, MRJA/MRIC does not even attempt to come forward with any evidence or allegations regarding a essential element of its claim: damages. Accordingly, summary

judgment is appropriate since MRI Center is the party with the burden of proof at trial on that issue.

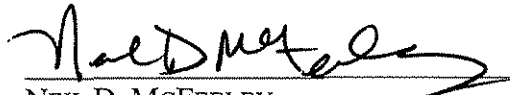
Finally, as the Court found in its earlier decision, there is absolutely no basis to suggest that there was any fiduciary relationship between MRIA/MRI Center and GSR.

Accordingly, Third Party Defendants respectfully request the Court to grant their Motion for Summary Judgment and dismiss MRIA's Fifth Claim for Relief.

Dated this 10<sup>th</sup> day of April, 2007.

EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD.

By:

  
NEIL D. MCFEELEY



### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2007, I caused to be served a true and correct copy of the foregoing document upon the following individual(s)/entity(ies), by the method indicated, and addressed as follows:

Thomas A. Banducci  
Greener, Banducci, Shoemaker, PA  
815 West Washington Street  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☒ Facsimile to (208) 319-2601

Jack S. Gjording  
Gjording & Fouser, PLLC  
509 West Hays Street  
Post Office Box 2837  
Boise, Idaho 83701

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☒ Facsimile to (208) 336-9177

Patrick J. Miller  
Givens Pursley, LLP  
601 West Bannock Street  
Post Office Box 2720  
Boise, Idaho 83701-2720

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☒ Facsimile to (208) 388-1300

David W. Lloyd  
Saetrum Law Offices  
101 South Capitol Boulevard, Suite 1800  
Post Office Box 7425  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☒ Facsimile to (208) 336-0448

  
NEIL D. MCFEELEY

Jack S. Gjording, ISB No. 1105  
Trudy Hanson Fouser, ISB No. 2794  
Bobbi K. Dominick, of Counsel, ISB No. 2895  
**GJORDING & FOUSER, PLLC**  
509 W. Hays Street  
P.O. Box 2837  
Boise, Idaho 83701  
Telephone: (208)336-9777  
Facsimile: (208)336-9177

Patrick J. Miller, ISB No. 3221  
**GIVENS PURSLEY LLP**  
601 W. Bannock Street  
P.O. Box 2720  
Boise, ID 83701-2720  
Telephone: (208) 388-1200  
Facsimile: (208) 388-1300

Attorneys for Plaintiff/CounterDefendants

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

SAINT ALPHONSUS DIVERSIFIED  
CARE, INC., an Idaho nonprofit corporation,

Plaintiff,

vs.

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Defendant.

Case No. CV OC 0408219D

**SAINT ALPHONSUS DIVERSIFIED  
CARE, INC., AND SAINT  
ALPHONSUS REGIONAL MEDICAL  
CENTER, INC.'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
ON THE FOURTH CLAIM FOR  
RELIEF IN SECOND AMENDED  
COUNTERCLAIM**

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:56

**APR 13 2007**

J. DAVID NAVARRO, Clerk  
By MARGARET LUNDQUIST  
DEPUTY

MRI ASSOCIATES, LLP, an Idaho limited liability partnership, on its own behalf, and on behalf of MRI Limited, an Idaho Limited Partnership, and MRI Mobile Limited, an Idaho Limited Partnership,

Counterclaimants,

vs.

SAINT ALPHONSUS DIVERSIFIED CARE, INC., an Idaho nonprofit corporation; SAINT ALPHONSUS REGIONAL MEDICAL CENTER,

Counterdefendants.

---

MRI ASSOCIATES, LLP, an Idaho limited liability partnership,

Third-Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING, LLC, an Idaho limited liability company; GEM STATE RADIOLOGY, LLP, an Idaho limited liability partnership; and IMAGING CENTER RADIOLOGISTS, LLP, an Idaho limited liability partnership,

Third-Party Defendants.

---

COMES NOW Plaintiff/Counterdefendants, Saint Alphonsus Diversified Care, Inc., and Saint Alphonsus Regional Medical Center, Inc., and pursuant to Rule 56 of the Idaho Rules of Civil Procedure, hereby move this Court for its order entering summary judgment in favor of Saint Alphonsus Diversified Care, Inc., and Saint Alphonsus Regional Medical Center, Inc., and against MRI Associates, on its own behalf and on behalf of MRI Limited and MRI Mobile


Limited, on the entirety of the Fourth Claim for Relief (Breach of Fiduciary Duties to MRI Limited and MRI Mobile Limited), as alleged in the Second Amended Counterclaim on file herein.

This Motion is based upon the pleadings and files contained herein, including, without limitation, the Affidavit of Jack S. Gjording filed contemporaneously herewith and Memorandum in support of this Motion for Partial Summary Judgment Re: Limited Partners.

ORAL ARGUMENT REQUESTED.

DATED this 13<sup>th</sup> day of April 2007.

GJORDING & FOUSER, PLLC

  
\_\_\_\_\_  
Jack S. Gjording  
Attorneys for Saint Alphonsus

### CERTIFICATE OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of April 2007, a true and correct copy of the

foregoing was served upon the following individual(s) by the means indicated:

Thomas A. Banducci  
GREENER BANDUCCI SHOEMAKER P.A.  
950 West Bannock, Suite 900  
Boise, ID 83702  
Facsimile (208) 319-2601

- ☒ U.S. mail, postage prepaid  
☐ express mail  
☐ hand delivery  
☐ facsimile

Warren E. Jones  
Joseph H. Uberuaga  
EBERLE BERLIN KADING TURNBOW  
McKLVEEN & JONES  
300 N. 6<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Boise, ID 83702  
Facsimile (208) 344-8542

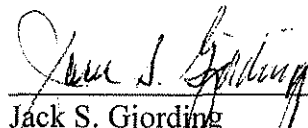
- ☒ U.S. mail, postage prepaid  
☐ express mail  
☐ hand delivery  
☐ facsimile

Rodney R. Saetrum  
SAETRUM LAW OFFICES  
101 S. Capitol Boulevard, Suite 1800  
Boise, ID 83702  
Facsimile (208) 336-0448

- ☒ U.S. mail, postage prepaid  
☐ express mail  
☐ hand delivery  
☐ facsimile

Patrick J. Miller  
GIVENS PURSLEY LLP  
601 West Bannock Street  
P.O. Box 2720  
Boise, ID 83701  
Facsimile (208) 388-1300

- ☒ U.S. mail, postage prepaid  
☐ express mail  
☐ hand delivery  
☐ facsimile

  
\_\_\_\_\_  
Jack S. Gjording

APR 23 2007

J. DAVID NAVARRO, Clerk  
By ABBY TEHL  
DEPUTY

Warren E. Jones, ISB No. 1193  
Neil D. McFeeley, ISB No. 3564  
EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD  
300 North Sixth Street  
Post Office Box 1368  
Boise, Idaho 83701  
Telephone: (208) 344-8535  
Facsimile: (208) 344-8542

Attorneys for INTERMOUNTAIN MEDICAL IMAGING, LLC,  
GEM STATE RADIOLOGY, LLP, and  
IMAGING CENTER RADIOLOGISTS, LLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation, )  
Plaintiff, )

Case No. CV OC 0408219D

vs. )

MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )  
Defendant. )

**THIRD PARTY DEFENDANTS'  
EXPERT WITNESS DISCLOSURE  
PURSUANT TO RULE 26(b)(4)(A)(i)  
OF THE IDAHO RULES OF CIVIL  
PROCEDURE**

MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )  
Counterclaimant, )

vs. )

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation; SAINT )  
ALPHONSUS REGIONAL MEDICAL )  
CENTER, )  
Counterdefendants. )

THIRD PARTY DEFENDANTS' EXPERT WITNESS DISCLOSURE PURSUANT TO RULE 26(B)(4)(A)(i) OF  
THE IDAHO RULES OF CIVIL PROCEDURE

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Third Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING,  
LLC, an Idaho limited liability company;  
GEM STATE RADIOLOGY, LLP, an Idaho  
limited liability partnership; and IMAGING  
CENTER RADIOLOGISTS, LLP, an Idaho  
limited liability partnership,

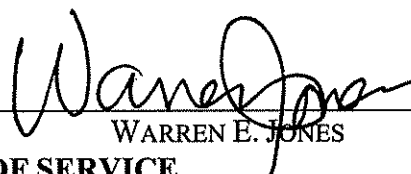
Third Party Defendants.

COME NOW Third Party Defendants INTERMOUNTAIN MEDICAL IMAGING, LLC,  
GEM STATE RADIOLOGY, LLP, and IMAGING CENTER RADIOLOGISTS, LLP, by and  
through their attorneys of record Warren E. Jones of the law firm of Eberle, Berlin, Kading,  
Turnbow, McKlveen & Jones, Chtd., and hereby disclose the following potential expert  
witnesses at the trial of the above-entitled action:

1. Dennis Reinstein, CPA, Boise, Idaho. See report attached as *Exhibit A*.
2. Mary River, M.D., Boise Idaho. See disclosure attached as *Exhibit B*.
3. Bruce Anderson, M.D., Ph.D., Boise, Idaho. See disclosure attached as *Exhibit C*.
4. Peter Reedy, M.D., Boise, Idaho. See disclosure attached as *Exhibit D*.
5. Samuel Gibson, M.D., Boise, Idaho. See disclosure attached as *Exhibit E*.
6. Marc C. Meier, M.D., Boise, Idaho. See disclosure attached as *Exhibit F*.

Dated this 23 day of April, 2007.

EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD.

By:   
WARREN E. JONES

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the \_\_\_\_\_ day of April, 2007, I caused to be served a true and correct copy of the foregoing document upon the following individual(s)/entity(ies), by the method indicated, and addressed as follows:

Thomas A. Banducci  
Greener, Banducci, Shoemaker, PA  
950 W. Bannock, Suite 900  
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivery  
☐ Facsimile to (208) 319-2601

Jack S. Gjording  
Gjording & Fouser, PLLC  
509 West Hays Street  
Post Office Box 2837  
Boise, Idaho 83701

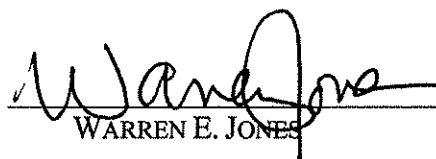
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 336-9177

Patrick J. Miller  
Givens Pursley, LLP  
601 West Bannock Street  
Post Office Box 2720  
Boise, Idaho 83701-2720

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 388-1300

David W. Lloyd  
Saetrum Law Offices  
101 South Capitol Boulevard, Suite 1800  
Post Office Box 7425  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 336-0448

  
WARREN E. JONES



***EXHIBIT A***

01070

# EXPERT WITNESS REPORT

Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP

Case number: CV OC 0408219D

Prepared for:

Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered

Prepared by:

Dennis R. Reinstein, CPA/ABV, ASA, CVA

Hooper Cornell, PLLC  
250 Bobwhite Court, Suite 300  
Boise, Idaho 83706

April 23, 2007


## INTRODUCTION

I have been engaged by Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered to analyze the opinions of Bruce P. Budge, CPA and Charles A. Wilhoite, CPA/ABV, CMA, ASA, CFM.

The entities referred to in this report will be identified by full name or as shown below.

Bruce P. Budge	Budge
Charles A. Wilhoite	Wilhoite
Saint Alphonsus Diversified Care	SADC
Saint Alphonsus Regional Medical Center	SARMC
MRI Associates, LLP	MRIA
MRI Center	MRIC
MRI Mobile	MRIM
Intermountain Medical Imaging, LLC	IMI
Imaging Center Radiologists, LLP	ICR
Gem State Radiology, LLP	GSR

Data relied upon in support of the opinions contained herein are as noted in each opinion and/or as listed in Table 1, which follows the opinions.

  
Dennis R. Reinstein, CPA/ABV, ASA, CVA

4-23-07  
Date

## OPINION 1 – BUDGE REPORT

Budge's calculation of "but-for" and alleged lost scan volume during the period 1999 – 2006 is unreliable, resulting in speculative alleged lost profits.

This opinion is based upon:

- 1) Referral analysis is not a simple accounting function. There are many complex and interrelated factors that must be considered to perform a credible analysis of alleged lost revenues based on alleged lost referrals.
- 2) The list of "lost" referring physicians utilized by Budge is heavily populated by alleged referral sources not supported by any independent corroboration other than the representation of Robin Cioffi.
- 3) Budge did not indicate that he had interviewed any of the alleged lost referral sources to determine why they no longer referred to MRIA.
- 4) Budge did not consider the impact of scan mix on alleged lost profits.
- 5) It is unlikely that MRIA would have obtained all of IMI's scans since MRIA only provides MRIs, whereas IMI is a multi-modality imaging center. Multi-modality imaging centers have distinct competitive advantages over single-modality centers, such as "one-stop" shopping which facilitates physician referrals.
- 6) Budge assumes "previously referring" physicians would not have developed relationships with providers other than IMI that may have contributed to the change in their referral patterns, and therefore lost to MRIA even if IMI had not opened.
- 7) Budge's analysis implicitly assumes that IMI could not have been MRIC's competitor and as such would not have received referrals from physicians who had previously referred to MRIA. There is no basis to support this assumption.
- 8) If IMI had not entered the Treasure Valley market, then it is likely that another competitor would have, thus contributing to the decline in the scan volumes of MRIC.
- 9) It is uncertain that MRIA had the capacity to perform the alleged but-for scan volume. Budge's analysis of scan volume capacity is incomplete. No specific data has been provided or considered related to the following:
  - a) maximum annual capacity for each of MRIC's magnets – in general.
  - b) calculation of annual capacity, i.e. how many hours per day, days per week and weeks per year the facility would operate.
  - c) daily hours of business operation.
  - d) competitive market place - (i.e. as more competitors entered there were more scheduling options available for the convenience of patients).

- e) when maintenance would be completed.
- 10) Budge does not consider the impact of reading physicians, including the termination of GSR, on referrals as the reputation of reading radiologists is important to referring physicians.
- 11) Under certain calculation scenarios, Budge assumes that all scans performed on SARMC Campus and at Meridian were scans that should have been performed by MRIA. He does not give consideration to the impact of IMI's central scheduling on his lost scan analysis.

#### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

## OPINION 2 – BUDGE REPORT

Budge did not properly include all variable expenses appropriate for a lost profit analysis. Accordingly, his calculation of alleged lost profits during 1999 – 2006 is overstated and unreliable.

This opinion is based upon:

- 1) Budge failed to consider billing costs.
- 2) Other costs such as housekeeping, training, marketing, etc., have elements of variable costs – these and other costs do not appear to have been formally analyzed by Budge in his selection.

### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

### OPINION 3 – BUDGE REPORT

The calculation of alleged losses related to IMI's Meridian (Magicview) operations is inappropriate and speculative.

This opinion is based upon:

- 1) Budge's analysis assumes that MRIA would have been able to replicate IMI's operations and its efficiencies in Meridian.
- 2) Meridian margins are not representative of MRIA's margins – Meridian operations are different than the MRIA operating model.
- 3) Not all start up costs have been considered, because some get allocated to non-MRI operations, which is an option not available to MRIA under their operating model.
- 4) MRIC never, in its operating history, reflected the level of margins achieved at Meridian.
- 5) IMI's central scheduling system may assign scans to the Meridian location that otherwise would not have been performed at that site.

### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

## OPINION 4 – BUDGE REPORT

Budge's assertion of control of IMI by SARMC is not supported by accounting literature or other documents significant to the relationship between IMI & SADC.

This opinion is based upon:

- 1) The Operating Agreement specifically states that it applies only to the non-MRI portion of IMI and does not apply to the ownership, operation and management of the MRI operation.
- 2) The income tax returns specifically allocate operations between the MRI and non-MRI portions of the IMI. The final allocation of the partner's share of income, deductions and credits, etc. on the income tax returns filed by IMI reflect SADC with the following ratios:
  - a) Profit 25.0%
  - b) Loss 25.0%
  - c) Capital 25.0%
- 3) Budge's assertion that the operating agreement gives voting control to SADC is a misrepresentation. SADC's 50% representation on the Managing Committee does not give SADC control. In fact, section 8.2.1 of the Operating Agreement states:

*"Decisions of the Managing Committee shall require the affirmative vote of at least fifty-one percent (51%) of the members of the Managing Committee. In the event of a deadlock or tie in the voting by the Members of the Managing Committee, the decision of ICR shall control." (Emphasis added)*

Certain significant actions as defined in the agreement require a 75% vote which is not unusual in entity agreements, but this does not alter "control."

The Operating Agreement provides that ICR will appoint the Chair of the Managing Committee; this provides ICR with the opportunity to exert greater influence over the partnership than SADC.

- 4) Budge cites in his deposition at 45:13 the requirement to consolidate financial reporting as one factor for which control is evaluated. When asked later in his deposition, by Mr. Jones at 129:10 "... in your opinion, is IMI required to be consolidated with any of the other entities?" Mr. Budge answered, "No."

In a follow up question at 129:14, Mr. Budge was asked "Is there a specific reason why not?" His answer was, "Because they share control. It's not vested in either one of them individually."

The Miller GAAP Guide in Section 8.02 – Consolidated Financial Statements, provides the following overview on consolidated financial statement reporting:

*"Consolidated financial statements are presumed to present more meaningful information than separate financial statements and must be used in substantially all cases in which a parent directly or indirectly controls the majority voting*



*interest (over 50%) of a subsidiary. Consolidated financial statements should not be used in those circumstances in which (a) the parent's control of the subsidiary is temporary or (b) there is significant doubt about concerning the parent's ability to control the subsidiary."*

- 5) Budge cites in his deposition at 46:4 in response to a question about other context used to assess control, *"But it's important in issues of identifying transactions between related parties, for example, in terms of looking at those relationships, to see if transactions are being conducted on an arm's length basis or not."*

Statement of Financial Accounting Standards No. 57 (As Amended) – Related Party Disclosures – defines control in Appendix B: Glossary, as follows:

*"b. Control. The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract, or otherwise."*

The Operating Agreement prescribes that activity between the members or their affiliates will be conducted at *"arms-length and for fair value."* This factor has the effect of lessening control of one who might otherwise be able to exert undue influence over the way business is conducted.

- 6) The Proposed Statement of Standards: Consolidated Financial Statements: Policy and Procedures of the Financial Accounting Standards Board defines control and proposes criteria for assessing the existence of control. The exposure draft cites six factors to consider, none of which would apply to indicate control of IMI by SADC or SARMC.
- 7) The Option and Purchase Agreement dated November 9, 2005 between ICR and SADC acknowledges in paragraph 5.2 the unencumbered ownership of the "MRI Division" of IMI by ICR.

#### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

## OPINION 1 – WILHOITE REPORT

Wilhoite's calculation of alleged future lost profits is unreliable and speculative based on the fact that he relied upon Budge's calculation of alleged lost profits in 2006 as the base for his projections of MRIA's future operations.

This opinion is based upon:

- 1) Wilhoite relied on the Budge assertion of lost profits without conducting any independent analysis.
- 2) The speculative analyses contained in the *Budge Opinions* related to alleged lost referrals and alleged lost scans, the failure to include all variable costs and the lack of comparability between the operations at Meridian and MRIC.

### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

## OPINION 2 – WILHOITE REPORT

Wilhoite fails to incorporate management fees as expenses in his projections in Exhibit 1-1 through Exhibit 1-4, resulting in an overstatement of alleged future lost profits in his alternative scenarios 1 – 4, respectively.

This opinion is based upon:

- 1) Wilhoite relies upon Budge's estimate of alleged lost profits in 2006. However, Budge did not include management fees as expenses when calculating alleged lost profits.
- 2) Wilhoite separately quantifies the value of alleged lost management fees to MRIA, but he has not correspondingly accounted for the fees in his expense projections<sup>1</sup> related to alleged lost scans. Accordingly, he has effectively counted them twice in his alleged total damage calculations.

### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

---

<sup>1</sup> See Wilhoite Deposition, page 219.

### OPINION 3 – WILHOITE REPORT

In addition to the criticisms noted above, Wilhoite's projections are unreliable and speculative due to his failure to adequately consider many factors that individually and certainly collectively would have a material negative impact on his projections of claimed lost revenues and resulting alleged lost profits.

This opinion is based upon:

#### *Threat of Existing and Future Competition*

- 1) Wilhoite states "increased capacity across the industry has begun to put pressures on margins, even in the high-end modalities such as MRI and CT."<sup>2</sup> However, Wilhoite projects pre-tax profit margins to remain constant from 2007 through 2023 – a significant inconsistency<sup>3</sup> which has the effect of overstating alleged losses.
- 2) MRI Center of Idaho/MRI Mobile Operational Summary (January 1999)<sup>4</sup> states "In southern California the market was destroyed by the glut of capacity to the point that Medicare reimbursements were considered good. The Boise market will only support so many MRIs."
- 3) Wilhoite relies on the Budge assumption that "previously referring" physicians would continue to refer to MRIA and would never have developed relationships with providers other than IMI that may have contributed to the change in their referral patterns, and therefore been lost to MRIA even if IMI had not opened, i.e. at some point during Wilhoite's future loss period:
  - a) SARMC affiliated physicians and physicians who had previous relationships and referral patterns with MRIA may have become, or will become, investors in competing MRI centers.
  - b) Previous referring physicians may have affiliated, or will affiliate, with competing facilities for convenience or other reasons.
- 4) The Treasure Valley had 15 MRI Scanners by the summer of 2005. The national average is 9 MRI scanners for populations of the valley's size (approximately 500,000).<sup>5</sup> Thus with six more than necessary, the Treasure valley is saturated with MRI scanners.<sup>6</sup> Wilhoite, however, grew MRIA's 2006 lost profits into the future at rates of 10% in 2007, 8% in 2008, 5% in 2009 and then 3% to the end of the alleged damage periods (either

---

<sup>2</sup> Wilhoite Expert Report, page 9.

<sup>3</sup> Wilhoite did decrease margins to 55% at the start of the alleged future damage period. However, he based this margin projection on analysis of *historical* results for guideline companies.

<sup>4</sup> Source found in Wilhoite's work papers.

<sup>5</sup> *Idaho Business Review*, 6/27/05, written by Lora Volkert (source found in Wilhoite's work papers). Note: MRI Associates Business Plan (July 1998) indicated "there is a demand for one MR scanner for every 75,000 – 90,000 people." As of July 1998, there were four scanners in Boise and a total population of 408,000 for Ada and Canyon counties combined.

<sup>6</sup> Jeffrey R. Cliff, Executive Director of Gem State Radiology, LLP and Intermountain Medical Imaging, LLC, indicated that no scanner in Treasure Valley is currently operating at capacity.

2015 or 2023). These projections fail to consider the impact of future competition and overcapacity concerns (lower revenue per scan and fewer scans).

- 5) Relative to some other states, Idaho has low barriers to entry in the healthcare field. Even though the Treasure Valley already has 15 scanners, there is a potential threat of additional scanners coming into the market between 2007 and the end of the alleged damage periods since Idaho does not require a certificate of need ("CON")<sup>7</sup> – leading to additional doubts as to MRIA's ability to achieve of Wilhoite's projections.
- 6) While it appears that Wilhoite dismisses these competitive threats, MRIA does not as noted in the quotes below:

*The increasing tendencies of some sub-specialists ALREADY providing their own diagnostic capabilities in-house, therefore, limiting the potential referral pool for fixed services within markets as well as the tendency [of] mobile clients to ultimately seek their own fixed technical offerings in spite of cost-benefit analysis which would support the benefit of an on-going mobile relationship.<sup>8</sup>*

*Teleradiology – enables non-radiologists with in-office imaging to obtain sub-specialty interpretations.<sup>9</sup>*

#### *Threat of Future Obsolescence*

- 7) Given the length of the alleged damage periods, it is likely that MRIA will have to upgrade its magnets to even remotely have a chance of meeting Wilhoite's projections. Tesla 3.0 scanners are already in some markets. To be considered state-of-the art in its health care services, which MRIA claims as one of its strengths,<sup>10</sup> it is likely that MRIA will have to upgrade some of its 1.5 scanners to 3.0 scanners sometime during the alleged damage periods. Wilhoite's projections fail to consider these required future capital expenditures. This omission inflates his alleged lost profit calculations.
- 8) Over the next 16 to 17 years covered by Wilhoite's projections, it is possible that some form of new technology could replace or even render MRIs obsolete. While it is unknown when and how rapidly any technology will evolve, it is even more uncertain what will happen to the current operations of MRIA over the extremely long time period covered by Wilhoite's projections. This further highlights the speculative nature of his projections and alleged lost profit conclusions.
- 9) Moreover, it also is likely that MRIM will, at a minimum, have to upgrade some of its magnets to 1.5T during the length of the alleged damage periods.<sup>11</sup> Wilhoite's projections also fail to consider these required future capital expenditures.

---

<sup>7</sup> Per conversation with Jeffrey R. Cliff.

<sup>8</sup> Practice Builders report to MRI Center of Idaho/MRI Mobile titled "Strategic Marketing Plan and Supportive Narrative" dated February 5, 2004 – page 7. Source found in Wilhoite's work papers.

<sup>9</sup> Imaging Strategic Plan Environmental Assessment 08/31/04 Imaging Planning Team – IMIRP/001224. Source found in Wilhoite's work papers.

<sup>10</sup> The Marketing Plan: Magnetic Resonance Imaging Center of Idaho - Boise, Idaho: June, 1998 (page 13) stated that the MRI Center must place emphasis "on its role as a leader in state-of-the-art technology." Source found in Wilhoite's work papers.

<sup>11</sup> Source: MRI Center of Idaho/MRI Mobile Strategic Planning Minutes, February 16, 2001 – "We can stretch out the financing for seven years since the life of the magnet has proven to be ten. The 1.5 T's

## Business Model

- 10) MRIA is a single modality operation which also lacks significant radiologist ownership. According to IMI management, the trend for the future is for imaging centers to become, if they have not already, multi-modality centers – with significant ownership by radiologists. While Wilhoite appears to dismiss MRIA's outdated business model (lack of significant radiologist ownership), MRIA does not as noted by the quotes below:

*By working in providing interpretation services for the MRI Center of Idaho and operating a competing facility a significant conflict of interest exists. They will encourage our referrals to, as Tom Clancy states, try out the competition. Their financial interests in the imaging center will be a powerful motivator. With the MRI Center of Idaho there is no financial stake other than the interpretation fees, which can be captured at the imaging center. They will market the same physicians we market. The imaging center owned and operated by the St. Alphonsus Radiology Group poses a most significant risk to the MRI Center of Idaho.*<sup>12</sup> (The underline passages are emphasis added)

*Lack of our own radiology personnel, which had led us to depend on interpretation services from an aggressive competitor. Lack of on-site radiologists even if we were to procure the services of well-respected radiologists from a known national practice.*<sup>13</sup>

- 11) In general, referring physicians want "ease of referral" in knowing regardless of their patients' needs, one center can handle it all.<sup>14</sup> While Wilhoite appears to dismiss the inherent drawbacks in MRIA's business model (single modality), MRIA does not as noted below:

*... the group has expressed concerns regarding the organization's ability to continue to thrive within a rapidly changing marketplace, due to changes within the field of radiology itself, and the ability to integrate and market new modalities and prepare for geographic expansion.*<sup>15</sup> (Emphasis added)

## Capacity Constraints

- 12) Budge claims that MRIA management indicated that they could meet the but-for projections of lost scan volume. However, this statement in a litigation-setting is at odds with the following assessment of capacity as stated in February 2004<sup>16</sup>:

---

are definitely the magnet of choice in the mobile arena and we need to upgrade the fleet in order to be competitive in this market."

<sup>12</sup> MRI Center of Idaho/MRI Mobile Operational Summary (January 1999) – page 4. Source found in Wilhoite's work papers. Please note that there is no mention of SARMC in this assessment of the market and threat of future competition. In other words, with or without SARMC's involvement, IMI (or if not IMI, then some other entity) was likely going to pose a "most significant risk."

<sup>13</sup> Practice Builders report to MRI Center of Idaho/MRI Mobile titled "Strategic Marketing Plan and Supportive Narrative" dated February 5, 2004 (page 6).

<sup>14</sup> Source: Conversation with Jeffrey R. Cliff and report of Manfred Steiner.

<sup>15</sup> Practice Builders report to MRI Center of Idaho/MRI Mobile titled "Strategic Marketing Plan and Supportive Narrative" dated February 5, 2004 (page 2).

<sup>16</sup> Ibid (page 6).

*Potential weakness if quantity of personnel (technicians and administrative staff) is insufficient to keep pace with increased work load demand, which could result in a service downturn. MRI Center of Idaho and MRI Mobile run extremely lean, leaving us vulnerable to an inability to fill excess capacity needs, to provide on-going customer service assessment and refinement, and to cultivate lead generation. (Emphasis added)*

- 13) Since Budge's calculation of lost scan volume is questionable given capacity constraints, every year that Wilhoite grows lost revenue (and presumably lost scan volume) into the future adds compounding doubt as to the accuracy of the projections – particularly in light of expected large decreases in reimbursement rates (see below).

Wilhoite mentions on page 159 of his deposition that he kept growth "relatively flat" through 2015 or 2023 since Budge did not address any capacity issues. However, this "relatively flat" growth of 10% in 2007, 8% in 2008, 5% in 2009 and 3% through the end of the alleged damage periods resulted in alleged total lost revenue of \$13,398,000 by 2015 (Alternative 1, or Exhibit 1-1) and \$16,972,000 by 2023 (Alternative 3, or Exhibit 1-3). These projections are only for lost revenue, which must be added to MRIA's future actual revenue during the alleged damage periods. It is extremely unlikely that MRIA would have obtained these levels of revenue given threats of competition, obsolescence, continued operation as a single-modality facility, reimbursement pressure, and obvious capacity constraints as time marched forward – particularly in light of the fact that Wilhoite did not model any capital expenditure upgrades.

#### *Reimbursement Pressure*

- 14) Wilhoite's growth projections fail (on a short-term as well as a long-term basis) to accurately consider substantial cuts in MRI reimbursements, which some have referred to as draconian.

Wilhoite claims to have considered the DRA "The Deficit Reduction Act of 2005" in his growth projections on page 129 of his deposition by scaling "back our growth rates to 3 percent within the first three years." (Note: capacity concerns (as well as competition) also impacted his selection of the growth rate – see above). Given the expected future decrease in reimbursements, the projections of any growth carry very high levels of risk that must be accounted for in the determination of the discount rate (see *Wilhoite Opinion 4*).

- 15) Wilhoite states "Industry analysts suggest future growth in imaging services will even overshadow short-term Medicare cuts under DRA".<sup>17</sup> This statement is at complete odds with other research and the Moran Report<sup>18</sup> titled "Assessing the Deficit Reduction Act Limits on Imaging Reimbursement: Cross-Site Comparisons of Cost and Reimbursement, Pre and Post DRA" (February 2007) – which Wilhoite had in his files.

The Moran Report discusses the DRA, which went into effect January 1, 2007, (coincidentally the start date to any alleged future damages) in part on page 3:

<sup>17</sup> Wilhoite Expert Report, page 10.

<sup>18</sup> "... the first in-depth analysis of the impact to providers (and ultimately patients) of the DRA imaging cuts." Source: American College of Radiology, "Moran Report: Nearly Nine out of 10 Imaging Procedures Affected by DRA Cuts Would Be Reimbursed Below Cost of Providing the Exam."

"In 2007, 155 out of the 174 (89%) procedures that are capped by the DRA (and for which we have complete data) will be paid at a rate of less than the estimated cost of performing the service; and" (Emphasis added)

"In 2010, 204 out of the 206 (99%) procedures that are capped by the DRA (and for which we have complete data) will be paid at a rate of less than the estimated cost of performing the service." (Emphasis added)

16) According to DiagnosticImaging.com,<sup>19</sup> DRA reimbursement reductions for MRI will equal 35.26%.

17) According to Pershing Yoakley & Associates<sup>20</sup>:

*"Wall Street has estimated that MRI reimbursement rates will be reduced by 15% to 40% ..."*

18) According to MRI Newsletter<sup>21</sup>:

*"The expectation in the imaging-provider world is that whatever cuts are implemented for government reimbursements will pave the way for private insurers to reduce their reimbursement rates, too."* (Emphasis added)

19) We understand that Blue Cross of Idaho cut reimbursement rates for MRI services by 12% in 2007.<sup>22</sup> It does not appear that Wilhoite has accounted for this cut in his projections.

20) In summary, Wilhoite may claim that he has considered some of these issues to the extent that they existed as of 2006. However in laymen's terms, risk is defined as the possibility of being wrong in your projections. Given the significant turmoil in the MRI industry as of 2006; as they say in the mutual fund industry - "past performance is no indication of future performance." For the reasons cited above, Wilhoite's projections are unreliable and speculative.

#### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

---

<sup>19</sup> "2007 Reimbursement guide: What you need to know."

<sup>20</sup> "Imaging Cuts – How Will Your Practice Respond?" PYA Alert - August 25, 2006.

<sup>21</sup> MRI Newsletter, "DRA And MRI Patient Throughput: Unconventional Wisdom vs. Reimbursement Cuts," August 2006.

<sup>22</sup> Source: Conversation with Jeffrey R. Cliff.



## OPINION 4 – WILHOITE REPORT

Wilhoite's calculation of the equity discount rate does not match the inherent risk embedded in his projections (as discussed in the previous opinion) or the risk in the industry in general, resulting in an unreliable calculation of the present value of alleged future lost profits. Wilhoite should have applied a significantly higher equity discount rate to the lost profit projections – particularly in light of the aggressive nature of his projections, which we consider to be speculative, as discussed in the previous opinions.

This opinion is based upon:

### *Selection of Appropriate Beta*

- 1) Wilhoite's Beta calculation provides a false sense of accuracy in his discount rate analysis.
  - a) Wilhoite relies upon five different companies (among other analysis) to select an appropriate beta for MRIA – allegedly equal to 0.39 on an un-levered basis. However, his work papers highlight the fact that these guideline companies' betas are especially poor measures of total risk as noted below.

	Un-levered beta	R-squares
Alliance Imaging	0.44	4%
RadNet <sup>23</sup>	0.34	0%
Miracor Diagnostics	0.11	0%
Modern Medical Modalities	0.83	0%
The Sagemark Companies	0.25	1%

This means that their respective betas were unable to explain from 96% to 100% of the stocks volatility or total risk. These comparables are extremely volatile, or risky, and their betas fail to capture this volatility. For example, for the week ended March 3, 2003, Alliance Imaging decreased 36.11% whereas the S&P 500 decreased only 1.46%. Since Alliance Imaging's levered beta, according to Wilhoite, is equal to 0.92, one would expect Alliance Imaging's weekly return to decrease by only 1.34% ( $1.46\% \times 0.92$ ) – a miss of almost 35 points (36.11% - 1.34%). Thus, a beta of only 0.92 belies the inherent total risk of this company, just as it does for all of the other comparables.

- b) Systematic or beta risk<sup>24</sup> explains nothing, or next to nothing, of the guideline stocks' total risk profiles, leaving little to no confidence in the calculation of Wilhoite's artificially low equity discount rate, and simultaneously indicating how important the selection of the company-specific risk premium ("CSRP") is in the calculation of the discount rate (See below).

<sup>23</sup> We calculated RadNet's R-square as we did not see this calculation in Wilhoite's work papers. We used five years of weekly return data and the S&P 500 to be consistent with Wilhoite.

<sup>24</sup> Wilhoite may counter that the health care industry is not overly dependent upon the economy (which we agree with), and therefore, not very risky (which we do *not* agree with). See Wilhoite deposition, page 199. However, the stock price volatilities of MRIA's guideline companies, as selected by Wilhoite, tell a drastically different story about total risk.

- c) Additionally, SBBI Valuation Edition 2006 Yearbook<sup>25</sup> cites that the industry premium for SIC code 8093 (specialty outpatient facilities, not elsewhere classified)<sup>26</sup> is equal to 0.28%. Since this figure is greater than 0%, this industry is more risky than the market. An industry that is more risky than the market correlates to a beta which is greater than 1.0 by definition – not a beta equal to only 0.4 as claimed by Wilhoite.
- d) Issues related to the problematic calculations are illustrated in *Wilhoite Opinion 4, Schedule 1*. As shown, RadNet, Miracor Diagnostics and the Sagemark Companies' T-stats (a measure of the statistical confidence of the beta calculations) are statistically insignificant, which helps explain the wide range of unlevered betas (0.11 to 0.83). This means that one cannot have much confidence that their betas are what they purport to be, leaving only one "comparable" as a proxy for beta – not a robust sample. Moreover, the surviving beta is unable to explain 96% of Alliance Imaging's return.

#### *Company-Specific Risk Premium (CSRP)*

- 2) Given the inability of beta to capture the total risk of these stocks, theoretically Wilhoite could have made up this obvious short-coming by applying a size premium (which he did) and a large CSRP to MRIA (which he did not).
- 3) In Exhibit 1-5 to his report, Wilhoite applies a "Small Stoek/Circumstance/Company Specific Risk Premium" (sic) equal to only 6.4% - which is the appropriate size premium for the micro-cap decile from SBBI 2006 Yearbook. This implies that Wilhoite applied a 0% CSRP to MRIA – an artificially low rate – given the very large CSRPs of the comparables and the fact that no company can likely have a 0% CSRP.
- 4) See *Wilhoite Opinion 4, Schedule 1* for calculations of the comparables' CSRPs.<sup>27</sup> The CSRPs for Alliance Imaging, RadNet, Miracor Diagnostics and The Sagemark Companies are equal to 22.76%, 46.19%, 36.34% and 28.60%, respectively<sup>28</sup> - yet Wilhoite selected 0% for MRIA – this is particularly more troubling given the fact that these comparables are more diversified geographically and offer multi-modality operations. It should be noted that the comparables' CSRPs are extremely large due to their betas' complete, or almost complete, inability to capture total risk.<sup>29</sup>
- 5) Wilhoite may counter that the capital asset pricing model ("CAPM") assumes that company-specific risk ("CSR") can be diversified away, and therefore, is not relevant to the analysis. However, there is ample evidence available that indicates that CSR

<sup>25</sup> Page 54.

<sup>26</sup> Wilhoite uses this SIC code throughout his report.

<sup>27</sup> This concept is more fully explained in the following sources: "Company-specific Risk – A Different Paradigm: A New Benchmark" in the Spring 2006 edition of *Business Valuation Review*; and "Quantifying Company-specific Risk: A New, Empirical Framework with Practical Applications" in the February 2007 edition of *Business Valuation Update* – both co-written by Peter Butler. Peter Butler has been asked to speak on this topic at various business valuation conferences and training sessions around the country later this year, including the Institute of Business Appraisers' 2007 Symposium, the Advanced ASA Business Valuation Conference and to the Internal Revenue Service, among others.

<sup>28</sup> We were unable to find pricing data on Modern Medical Modalities from Yahoo!Finance for the pertinent time period.

<sup>29</sup> Note: Miracor Diagnostics and The Sagemark Companies are thinly-traded. Thus, their CSRPs likely include some effects due to lack of marketability.

matters (at least on some level) to publicly-traded stock price returns. More importantly, privately-held companies generally are valued by considering CSR (total risk) given the inability of most privately-held business owners to properly diversify their portfolios. Wilhoite may also claim that CSRPs of this magnitude make no sense. However, we are not claiming that investors required this rate of return on investments in these guideline companies because they can diversify away some, but not all, of these CSRPs by holding a well-diversified portfolio. As stand-alone assets,<sup>30</sup> however, these stocks (and MRIA) are very risky, as noted above. Thus, the CSRPs of the guideline companies provide strong indications that Wilhoite's conclusion of 0% for MRIA's CSRP is materially inadequate to measure the risks inherent in his projections.

#### *Intangible Asset Valuation*

- 6) Wilhoite claims he is performing an intangible asset valuation<sup>31</sup> - essentially valuing lost referral relationships. However, on pages 166 - 167 of his deposition, he states that he applied the discount rate of the company as a whole to this intangible asset. It is common knowledge in the valuation community that, generally speaking, intangible assets are more risky than whole companies - since whole companies are also comprised of working capital (not very risky) and fixtures and equipment (not very risky). On the other hand, referral relationships can and do change very rapidly (risky).

#### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

---

<sup>30</sup> The proper perspective to value MRIA's alleged lost profits.

<sup>31</sup> Wilhoite Deposition, page 86.

Quantification of Total Cost of Equity and Company-Specific Risk  
Comparables as Determined by Charles Wilhoite

Observation	Date	Weekly Price					Weekly Return				
		S&P 500	AIQ	RadNet	Miracor	Sagemark	S&P 500	AIQ	RadNet	Miracor	Sagemark
1	12/31/01	\$1,172.51	\$11.80	\$2.74	\$0.28	\$3.85					
2	1/7/02	\$1,145.60	\$10.85	\$2.46	\$0.33	\$3.70	-2.30%	-8.05%	-10.22%	17.86%	-3.90%
3	1/14/02	\$1,127.58	\$10.60	\$2.72	\$0.26	\$4.00	-1.57%	-2.30%	10.57%	-21.21%	8.11%
4	1/22/02	\$1,133.28	\$11.55	\$2.66	\$0.32	\$4.00	0.51%	8.96%	-2.21%	23.08%	0.00%
5	1/28/02	\$1,122.20	\$11.75	\$2.34	\$0.26	\$3.75	-0.98%	1.73%	-12.03%	-18.75%	-6.25%
6	2/4/02	\$1,096.22	\$11.55	\$2.70	\$0.22	\$4.00	-2.32%	-1.70%	15.38%	-15.38%	6.67%
7	2/11/02	\$1,104.18	\$11.20	\$2.84	\$0.20	\$4.00	0.73%	-3.03%	5.19%	-9.09%	0.00%
8	2/19/02	\$1,089.84	\$11.15	\$3.44	\$0.19	\$3.80	-1.30%	-0.45%	21.13%	-5.00%	-5.00%
9	2/25/02	\$1,131.78	\$11.47	\$3.34	\$0.23	\$3.80	3.85%	2.87%	-2.91%	21.05%	0.00%
10	3/4/02	\$1,164.31	\$12.60	\$3.30	\$0.23	\$3.75	2.87%	9.85%	-1.20%	0.00%	-1.32%
11	3/11/02	\$1,166.16	\$12.75	\$3.32	\$0.28	\$3.10	0.16%	1.19%	0.61%	21.74%	-17.33%
12	3/18/02	\$1,148.70	\$12.28	\$3.46	\$0.23	\$3.25	-1.50%	-3.69%	4.22%	-17.86%	4.84%
13	3/25/02	\$1,147.39	\$12.30	\$3.24	\$0.28	\$2.40	-0.11%	0.16%	-6.36%	21.74%	-26.15%
14	4/1/02	\$1,122.73	\$12.76	\$3.22	\$0.27	\$2.60	-2.15%	3.74%	-0.62%	-3.57%	8.33%
15	4/8/02	\$1,111.01	\$13.84	\$3.10	\$0.27	\$2.90	-1.04%	8.46%	-3.73%	0.00%	11.54%
16	4/15/02	\$1,125.17	\$13.20	\$3.00	\$0.26	\$3.60	1.27%	-4.62%	-3.23%	-3.70%	24.14%
17	4/22/02	\$1,076.32	\$12.95	\$2.96	\$0.26	\$3.35	-4.34%	-1.89%	-1.33%	0.00%	-6.94%
18	4/29/02	\$1,073.43	\$13.00	\$2.90	\$0.27	\$3.50	-0.27%	0.39%	-2.03%	3.85%	4.48%
19	5/6/02	\$1,054.99	\$12.85	\$2.90	\$0.32	\$3.50	-1.72%	-1.15%	0.00%	18.52%	0.00%
20	5/13/02	\$1,106.59	\$12.80	\$2.80	\$0.27	\$3.10	4.89%	-0.39%	-3.45%	-15.63%	-11.43%
21	5/20/02	\$1,083.82	\$12.89	\$2.80	\$0.27	\$3.80	-2.06%	0.70%	0.00%	0.00%	22.58%
22	5/28/02	\$1,067.14	\$13.45	\$2.68	\$0.27	\$4.10	-1.54%	4.34%	-4.29%	0.00%	7.89%
23	6/3/02	\$1,027.53	\$14.45	\$2.44	\$0.25	\$3.90	-3.71%	7.43%	-8.96%	-7.41%	-4.88%
24	6/10/02	\$1,007.27	\$15.04	\$2.58	\$0.25	\$4.00	-1.97%	4.08%	5.74%	0.00%	2.56%
25	6/17/02	\$989.14	\$15.35	\$2.46	\$0.27	\$3.95	-1.80%	2.06%	-4.65%	8.00%	-1.25%
26	6/24/02	\$989.82	\$13.50	\$2.42	\$0.27	\$3.95	0.07%	-12.05%	-1.63%	0.00%	0.00%
27	7/1/02	\$989.03	\$13.45	\$2.10	\$0.25	\$3.00	-0.08%	-0.37%	-13.22%	-7.41%	-24.05%
28	7/8/02	\$921.39	\$11.77	\$2.50	\$0.25	\$3.25	-6.84%	-12.49%	19.05%	0.00%	8.33%
29	7/15/02	\$847.75	\$11.30	\$2.50	\$0.28	\$3.22	-7.99%	-3.99%	0.00%	12.00%	-0.92%
30	7/22/02	\$852.84	\$12.80	\$2.00	\$0.25	\$3.05	0.60%	13.27%	-20.00%	-10.71%	-5.28%
31	7/29/02	\$864.24	\$12.70	\$2.10	\$0.25	\$3.05	1.34%	-0.78%	5.00%	0.00%	0.00%
32	8/5/02	\$908.64	\$11.50	\$2.20	\$0.25	\$3.05	5.14%	-9.45%	4.76%	0.00%	0.00%
33	8/12/02	\$928.77	\$12.15	\$2.38	\$0.25	\$3.05	2.22%	5.65%	8.18%	0.00%	0.00%
34	8/19/02	\$940.86	\$12.16	\$2.28	\$0.26	\$3.45	1.30%	0.08%	-4.20%	4.00%	13.11%
35	8/26/02	\$916.07	\$12.25	\$2.26	\$0.25	\$3.45	-2.63%	0.74%	-0.88%	-3.85%	0.00%
36	9/3/02	\$893.92	\$12.51	\$2.12	\$0.24	\$3.25	-2.42%	2.12%	-6.19%	-4.00%	-5.80%
37	9/9/02	\$889.81	\$13.28	\$2.36	\$0.26	\$3.75	-0.46%	6.16%	11.32%	8.33%	15.38%
38	9/16/02	\$845.39	\$12.00	\$2.06	\$0.26	\$3.55	-4.99%	-9.64%	-12.71%	0.00%	-5.33%
39	9/23/02	\$827.37	\$11.25	\$1.58	\$0.25	\$3.55	-2.13%	-6.25%	-23.30%	-3.85%	0.00%
40	9/30/02	\$800.58	\$11.75	\$1.62	\$0.24	\$4.05	-3.24%	4.44%	2.53%	-4.00%	14.08%
41	10/7/02	\$835.32	\$12.40	\$1.20	\$0.23	\$3.50	4.34%	5.53%	-25.93%	-4.17%	-13.58%
42	10/14/02	\$884.39	\$11.42	\$1.40	\$0.24	\$3.60	5.87%	-7.90%	16.67%	4.35%	2.86%
43	10/21/02	\$897.65	\$11.62	\$1.80	\$0.22	\$3.52	1.50%	1.75%	28.57%	-8.33%	-2.22%
44	10/28/02	\$900.96	\$10.86	\$1.52	\$0.21	\$3.50	0.37%	-6.54%	-15.56%	-4.55%	-0.57%
45	11/4/02	\$894.74	\$9.17	\$1.18	\$0.26	\$3.45	-0.69%	-15.56%	-22.37%	23.81%	-1.43%
46	11/11/02	\$909.83	\$6.51	\$1.34	\$0.30	\$3.60	1.69%	-29.01%	13.56%	15.38%	4.35%
47	11/18/02	\$930.55	\$7.76	\$1.04	\$0.26	\$3.40	2.28%	19.20%	-22.39%	-13.33%	-5.56%
48	11/25/02	\$936.31	\$7.00	\$0.92	\$0.30	\$3.50	0.62%	-9.79%	-11.54%	15.38%	2.94%
49	12/2/02	\$912.23	\$8.70	\$0.90	\$0.28	\$3.40	-2.57%	24.29%	-2.17%	-6.67%	-2.86%
50	12/9/02	\$889.48	\$7.00	\$0.88	\$0.25	\$3.50	-2.49%	-19.54%	-2.22%	-10.71%	2.94%
51	12/16/02	\$895.76	\$5.28	\$0.80	\$0.26	\$3.25	0.71%	-24.57%	-9.09%	4.00%	-7.14%
52	12/23/02	\$875.40	\$4.98	\$1.00	\$0.28	\$3.40	-2.27%	-5.68%	25.00%	7.69%	4.62%
53	12/30/02	\$908.59	\$5.07	\$0.94	\$0.26	\$3.50	3.79%	1.81%	-6.00%	-7.14%	2.94%
54	1/6/03	\$927.57	\$4.67	\$1.02	\$0.32	\$3.50	2.09%	-7.89%	8.51%	23.08%	0.00%
55	1/13/03	\$901.78	\$5.32	\$0.96	\$0.32	\$3.50	-2.78%	13.92%	-5.88%	0.00%	0.00%
56	1/21/03	\$861.40	\$5.20	\$0.88	\$0.30	\$3.50	-4.48%	-2.26%	-8.33%	-6.25%	0.00%
57	1/27/03	\$855.70	\$4.99	\$0.72	\$0.33	\$3.50	-0.66%	-4.04%	-18.18%	10.00%	0.00%
58	2/3/03	\$829.69	\$4.59	\$0.78	\$0.30	\$3.50	-3.04%	-8.02%	8.33%	-9.09%	0.00%
59	2/10/03	\$834.89	\$4.56	\$0.60	\$0.25	\$3.40	0.63%	-0.65%	-23.08%	-16.67%	-2.86%
60	2/18/03	\$848.17	\$4.48	\$0.84	\$0.25	\$3.35	1.59%	-1.75%	40.00%	0.00%	-1.47%
61	2/24/03	\$841.15	\$4.32	\$0.70	\$0.23	\$3.35	-0.83%	-3.57%	-16.67%	-8.00%	0.00%
62	3/3/03	\$828.89	\$2.76	\$0.64	\$0.25	\$3.50	-1.46%	-36.11%	-8.57%	8.70%	4.48%
63	3/10/03	\$833.27	\$3.01	\$0.52	\$0.24	\$3.00	0.53%	9.06%	-18.75%	-4.00%	-14.29%
64	3/17/03	\$895.79	\$3.06	\$0.52	\$0.23	\$3.60	7.50%	1.66%	0.00%	-4.17%	20.00%

**Quantification of Total Cost of Equity and Company-Specific Risk  
Comparables as Determined by Charles Wilhoite**

Observation	Date	S&P 500	Weekly Price				S&P 500	Weekly Return			
			AIQ	RadNet	Miracor	Sagemark		AIQ	RadNet	Miracor	Sagemark
65	3/24/03	\$863.50	\$3.25	\$0.54	\$0.23	\$3.50	-3.60%	6.21%	3.85%	0.00%	-2.78%
66	3/31/03	\$878.85	\$3.33	\$0.52	\$0.22	\$3.50	1.78%	2.46%	-3.70%	-4.35%	0.00%
67	4/7/03	\$868.30	\$2.61	\$0.40	\$0.21	\$3.50	-1.20%	-21.62%	-23.08%	-4.55%	0.00%
68	4/14/03	\$893.58	\$2.85	\$0.50	\$0.28	\$3.30	2.91%	9.20%	25.00%	33.33%	-5.71%
69	4/21/03	\$898.81	\$3.08	\$0.46	\$0.24	\$3.30	0.59%	8.07%	-8.00%	-14.29%	0.00%
70	4/28/03	\$930.08	\$4.48	\$0.44	\$0.24	\$3.45	3.48%	45.45%	-4.35%	0.00%	4.55%
71	5/5/03	\$933.41	\$5.14	\$0.76	\$0.23	\$3.45	0.36%	14.73%	72.73%	-4.17%	0.00%
72	5/12/03	\$944.30	\$4.90	\$0.60	\$0.20	\$3.50	1.17%	-4.67%	-21.05%	-13.04%	1.45%
73	5/19/03	\$933.22	\$4.45	\$0.56	\$0.19	\$3.25	-1.17%	-9.18%	-6.67%	-5.00%	-7.14%
74	5/27/03	\$963.59	\$4.65	\$0.56	\$0.19	\$3.25	3.25%	4.49%	0.00%	0.00%	0.00%
75	6/2/03	\$987.76	\$4.68	\$0.62	\$0.22	\$3.25	2.51%	0.65%	10.71%	15.79%	0.00%
76	6/9/03	\$988.61	\$4.79	\$0.60	\$0.23	\$3.05	0.09%	2.35%	-3.23%	4.55%	-6.15%
77	6/16/03	\$995.69	\$4.60	\$0.52	\$0.24	\$2.85	0.72%	-3.97%	-13.33%	4.35%	-6.56%
78	6/23/03	\$976.22	\$4.55	\$0.58	\$0.24	\$2.55	-1.96%	-1.09%	11.54%	0.00%	-10.53%
79	6/30/03	\$985.70	\$4.54	\$0.50	\$0.24	\$2.55	0.97%	-0.22%	-13.79%	0.00%	0.00%
80	7/7/03	\$998.14	\$4.30	\$0.38	\$0.22	\$2.55	1.26%	-5.29%	-24.00%	-8.33%	0.00%
81	7/14/03	\$993.32	\$3.79	\$0.38	\$0.25	\$2.55	-0.48%	-11.86%	0.00%	13.64%	0.00%
82	7/21/03	\$998.68	\$3.90	\$0.48	\$0.24	\$2.55	0.54%	2.90%	26.32%	-4.00%	0.00%
83	7/28/03	\$980.15	\$3.91	\$0.46	\$0.25	\$2.95	-1.86%	0.26%	-4.17%	4.17%	15.69%
84	8/4/03	\$977.59	\$3.79	\$0.50	\$0.25	\$2.70	-0.26%	-3.07%	8.70%	0.00%	-8.47%
85	8/11/03	\$990.67	\$3.62	\$0.44	\$0.23	\$2.70	1.34%	-4.49%	-12.00%	-8.00%	0.00%
86	8/18/03	\$993.06	\$3.60	\$0.44	\$0.23	\$2.50	0.24%	-0.55%	0.00%	0.00%	-7.41%
87	8/25/03	\$1,008.01	\$3.68	\$0.44	\$0.21	\$2.50	1.51%	2.22%	0.00%	-8.70%	0.00%
88	9/2/03	\$1,021.39	\$3.88	\$0.40	\$0.24	\$2.30	1.33%	5.43%	-9.09%	14.29%	-8.00%
89	9/8/03	\$1,018.63	\$3.88	\$0.40	\$0.25	\$2.30	-0.27%	0.00%	0.00%	4.17%	0.00%
90	9/15/03	\$1,036.30	\$3.63	\$0.38	\$0.26	\$2.60	1.73%	-6.44%	-5.00%	4.00%	13.04%
91	9/22/03	\$996.85	\$3.43	\$0.36	\$0.26	\$2.55	-3.81%	-5.51%	-5.26%	0.00%	-1.92%
92	9/29/03	\$1,029.85	\$3.42	\$0.44	\$0.25	\$2.55	3.31%	-0.29%	22.22%	-3.85%	0.00%
93	10/6/03	\$1,038.06	\$3.63	\$0.80	\$0.27	\$2.55	0.80%	6.14%	81.82%	8.00%	0.00%
94	10/13/03	\$1,039.32	\$4.36	\$1.00	\$0.39	\$2.45	0.12%	20.11%	25.00%	44.44%	-3.92%
95	10/20/03	\$1,028.91	\$4.39	\$0.78	\$0.42	\$2.60	-1.00%	0.69%	-22.00%	7.69%	6.12%
96	10/27/03	\$1,050.71	\$4.68	\$0.98	\$0.40	\$2.45	2.12%	6.61%	25.64%	-4.76%	-5.77%
97	11/3/03	\$1,053.21	\$4.06	\$0.96	\$0.38	\$2.45	0.24%	-13.25%	-2.04%	-5.00%	0.00%
98	11/10/03	\$1,050.35	\$3.96	\$0.94	\$0.37	\$2.45	-0.27%	-2.46%	-2.08%	-2.63%	0.00%
99	11/17/03	\$1,035.28	\$3.81	\$0.92	\$0.38	\$2.50	-1.43%	-3.79%	-2.13%	2.70%	2.04%
100	11/24/03	\$1,058.20	\$3.85	\$0.96	\$0.36	\$2.50	2.21%	1.05%	4.35%	-5.26%	0.00%
101	12/1/03	\$1,061.50	\$3.90	\$0.88	\$0.41	\$2.45	0.31%	1.30%	-8.33%	13.89%	-2.00%
102	12/8/03	\$1,074.14	\$3.77	\$0.92	\$0.38	\$2.50	1.19%	-3.33%	4.55%	-7.32%	2.04%
103	12/15/03	\$1,088.66	\$3.85	\$1.02	\$0.38	\$2.35	1.35%	2.12%	10.87%	0.00%	-6.00%
104	12/22/03	\$1,095.89	\$3.80	\$1.14	\$0.36	\$2.35	0.66%	-1.30%	11.76%	-5.26%	0.00%
105	12/29/03	\$1,108.48	\$3.69	\$1.10	\$0.32	\$2.00	1.15%	-2.89%	-3.51%	-11.11%	-14.89%
106	1/5/04	\$1,121.86	\$3.62	\$1.40	\$0.41	\$1.80	1.21%	-1.90%	27.27%	28.13%	-10.00%
107	1/12/04	\$1,139.83	\$4.01	\$1.38	\$0.41	\$1.80	1.60%	10.77%	-1.43%	0.00%	0.00%
108	1/20/04	\$1,141.55	\$4.02	\$1.38	\$0.47	\$1.80	0.15%	0.25%	0.00%	14.63%	0.00%
109	1/26/04	\$1,131.13	\$3.99	\$1.42	\$0.43	\$1.50	-0.91%	-0.75%	2.90%	-8.51%	-16.67%
110	2/2/04	\$1,142.76	\$3.95	\$1.30	\$0.60	\$1.50	1.03%	-1.00%	-8.45%	39.53%	0.00%
111	2/9/04	\$1,145.81	\$3.81	\$1.10	\$0.55	\$1.75	0.27%	-3.54%	-15.38%	-8.33%	16.67%
112	2/17/04	\$1,144.11	\$3.70	\$1.08	\$0.50	\$1.90	-0.15%	-2.89%	-1.82%	-9.09%	8.57%
113	2/23/04	\$1,144.94	\$3.83	\$1.00	\$0.52	\$2.25	0.07%	3.51%	-7.41%	4.00%	18.42%
114	3/1/04	\$1,156.86	\$4.14	\$1.08	\$0.63	\$2.70	1.04%	8.09%	8.00%	21.15%	20.00%
115	3/8/04	\$1,120.57	\$3.76	\$1.10	\$0.58	\$2.90	-3.14%	-9.18%	1.85%	-7.94%	7.41%
116	3/15/04	\$1,109.78	\$3.55	\$1.36	\$0.55	\$2.90	-0.96%	-5.59%	23.64%	-5.17%	0.00%
117	3/22/04	\$1,108.06	\$3.70	\$1.34	\$0.50	\$2.90	-0.15%	4.23%	-1.47%	-9.09%	0.00%
118	3/29/04	\$1,141.81	\$3.89	\$1.24	\$0.45	\$2.60	3.05%	5.14%	-7.46%	-10.00%	-10.34%
119	4/5/04	\$1,139.32	\$3.84	\$1.10	\$0.44	\$2.50	-0.22%	-1.29%	-11.29%	-2.22%	-3.85%
120	4/12/04	\$1,134.61	\$3.97	\$0.82	\$0.40	\$2.65	-0.41%	3.39%	-25.45%	-9.09%	6.00%
121	4/19/04	\$1,140.60	\$3.90	\$0.96	\$0.38	\$2.65	0.53%	-1.76%	17.07%	-5.00%	0.00%
122	4/26/04	\$1,107.30	\$3.82	\$0.92	\$0.31	\$2.60	-2.92%	-2.05%	-4.17%	-18.42%	-1.89%
123	5/3/04	\$1,098.70	\$3.89	\$0.90	\$0.33	\$2.60	-0.78%	1.83%	-2.17%	6.45%	0.00%
124	5/10/04	\$1,095.70	\$3.85	\$0.90	\$0.42	\$2.50	-0.27%	-1.03%	0.00%	27.27%	-3.85%
125	5/17/04	\$1,093.56	\$3.86	\$0.78	\$0.45	\$2.50	-0.20%	0.26%	-13.33%	7.14%	0.00%
126	5/24/04	\$1,120.68	\$3.84	\$0.76	\$0.40	\$3.10	2.48%	-0.52%	-2.56%	-11.11%	24.00%
127	6/1/04	\$1,122.50	\$3.95	\$0.80	\$0.53	\$2.26	0.16%	2.86%	5.26%	32.50%	-27.10%
128	6/7/04	\$1,136.47	\$4.38	\$0.80	\$0.60	\$3.00	1.24%	10.89%	0.00%	13.21%	32.74%
129	6/14/04	\$1,135.02	\$4.75	\$0.60	\$0.60	\$2.35	-0.13%	8.45%	-25.00%	0.00%	-21.67%

**Quantification of Total Cost of Equity and Company-Specific Risk  
Comparables as Determined by Charles Wilhoite**

Observation	Date	S&P 500	Weekly Price				S&P 500	AIQ	Weekly Return			
			AIQ	RadNet	Miracor	Sagemark			RadNet	Miracor	Sagemark	
130	6/21/04	\$1,134.43	\$4.80	\$0.62	\$0.56	\$3.50	-0.05%	1.05%	3.33%	-6.67%	48.94%	
131	6/28/04	\$1,125.38	\$4.54	\$0.86	\$0.60	\$3.35	-0.80%	-5.42%	38.71%	7.14%	-4.29%	
132	7/6/04	\$1,112.81	\$4.39	\$0.76	\$0.50	\$3.25	-1.12%	-3.30%	-11.63%	-16.67%	-2.99%	
133	7/12/04	\$1,101.39	\$4.22	\$0.70	\$0.55	\$3.50	-1.03%	-3.87%	-7.89%	10.00%	7.69%	
134	7/19/04	\$1,086.20	\$4.18	\$0.66	\$0.47	\$3.25	-1.38%	-0.95%	-5.71%	-14.55%	-7.14%	
135	7/26/04	\$1,101.72	\$4.90	\$0.60	\$0.45	\$3.40	1.43%	17.22%	-9.09%	-4.26%	4.62%	
136	8/2/04	\$1,063.97	\$4.86	\$0.60	\$0.43	\$3.25	-3.43%	-0.82%	0.00%	-4.44%	-4.41%	
137	8/9/04	\$1,064.80	\$5.36	\$0.60	\$0.44	\$3.25	0.08%	10.29%	0.00%	2.33%	0.00%	
138	8/16/04	\$1,098.35	\$6.24	\$0.94	\$0.44	\$3.15	3.15%	16.42%	56.67%	0.00%	-3.08%	
139	8/23/04	\$1,107.77	\$6.22	\$1.10	\$0.45	\$3.15	0.86%	-0.32%	17.02%	2.27%	0.00%	
140	8/30/04	\$1,113.63	\$6.19	\$1.04	\$0.42	\$3.25	0.53%	-0.48%	-5.45%	-6.67%	3.17%	
141	9/7/04	\$1,123.92	\$6.80	\$0.92	\$0.39	\$3.25	0.92%	9.85%	-11.54%	-7.14%	0.00%	
142	9/13/04	\$1,128.55	\$7.61	\$0.70	\$0.34	\$3.25	0.41%	11.91%	-23.91%	-12.82%	0.00%	
143	9/20/04	\$1,110.11	\$7.50	\$0.72	\$0.31	\$3.25	-1.63%	-1.45%	2.86%	-8.82%	0.00%	
144	9/27/04	\$1,131.50	\$7.44	\$0.86	\$0.37	\$3.43	1.93%	-0.80%	19.44%	19.35%	5.54%	
145	10/4/04	\$1,122.14	\$6.71	\$1.04	\$0.35	\$3.30	-0.83%	-9.81%	20.93%	-5.41%	-3.79%	
146	10/11/04	\$1,108.20	\$6.22	\$1.04	\$0.39	\$3.05	-1.24%	-7.30%	0.00%	11.43%	-7.58%	
147	10/18/04	\$1,095.74	\$7.20	\$1.02	\$0.45	\$2.85	-1.12%	15.76%	-1.92%	15.38%	-6.56%	
148	10/25/04	\$1,130.20	\$7.43	\$1.12	\$0.37	\$2.90	3.14%	3.19%	9.80%	-17.78%	1.75%	
149	11/1/04	\$1,166.17	\$7.05	\$1.08	\$0.34	\$3.00	3.18%	-5.11%	-3.57%	-8.11%	3.45%	
150	11/8/04	\$1,184.17	\$7.62	\$1.02	\$0.32	\$3.25	1.54%	8.09%	-5.56%	-5.88%	8.33%	
151	11/15/04	\$1,170.34	\$7.49	\$1.00	\$0.30	\$2.75	-1.17%	-1.71%	-1.96%	-6.25%	-15.38%	
152	11/22/04	\$1,182.65	\$8.98	\$1.00	\$0.40	\$3.00	1.05%	19.89%	0.00%	33.33%	9.09%	
153	11/29/04	\$1,191.17	\$9.86	\$1.00	\$0.45	\$3.00	0.72%	9.80%	0.00%	12.50%	0.00%	
154	12/6/04	\$1,188.00	\$9.33	\$1.08	\$0.33	\$3.10	-0.27%	-5.38%	8.00%	-26.67%	3.33%	
155	12/13/04	\$1,194.20	\$11.25	\$1.00	\$0.35	\$3.50	0.52%	20.58%	-7.41%	6.06%	12.90%	
156	12/20/04	\$1,210.13	\$11.12	\$1.08	\$0.46	\$3.50	1.33%	-1.16%	8.00%	31.43%	0.00%	
157	12/27/04	\$1,211.92	\$11.25	\$1.06	\$0.50	\$3.50	0.15%	1.17%	-1.85%	8.70%	0.00%	
158	1/3/05	\$1,186.19	\$11.65	\$1.12	\$0.48	\$4.00	-2.12%	3.56%	5.66%	-4.00%	14.29%	
159	1/10/05	\$1,184.52	\$13.70	\$1.12	\$0.47	\$4.70	-0.14%	17.60%	0.00%	-2.08%	17.50%	
160	1/18/05	\$1,167.87	\$12.95	\$1.14	\$0.42	\$3.75	-1.41%	-5.47%	1.79%	-10.64%	-20.21%	
161	1/24/05	\$1,171.36	\$12.92	\$1.00	\$0.43	\$3.80	0.30%	-0.23%	-12.28%	2.38%	1.33%	
162	1/31/05	\$1,203.03	\$12.04	\$0.90	\$0.48	\$3.55	2.70%	-6.81%	-10.00%	11.63%	-6.58%	
163	2/7/05	\$1,205.30	\$12.24	\$0.92	\$0.41	\$3.85	0.19%	1.66%	2.22%	-14.58%	8.45%	
164	2/14/05	\$1,201.59	\$12.37	\$0.84	\$0.37	\$3.85	-0.31%	1.06%	-8.70%	-9.76%	0.00%	
165	2/22/05	\$1,211.37	\$11.45	\$0.80	\$0.33	\$3.75	0.81%	-7.44%	-4.76%	-10.81%	-2.60%	
166	2/28/05	\$1,222.12	\$11.99	\$0.70	\$0.35	\$3.35	0.89%	4.72%	-12.50%	6.06%	-10.67%	
167	3/7/05	\$1,200.08	\$10.73	\$0.66	\$0.29	\$3.15	-1.80%	-10.51%	-5.71%	-17.14%	-5.97%	
168	3/14/05	\$1,189.65	\$9.93	\$0.74	\$0.27	\$3.35	-0.87%	-7.46%	12.12%	-6.90%	6.35%	
169	3/21/05	\$1,171.42	\$9.42	\$0.80	\$0.32	\$3.35	-1.53%	-5.14%	8.11%	18.52%	0.00%	
170	3/28/05	\$1,172.92	\$9.76	\$0.68	\$0.32	\$3.35	0.13%	3.61%	-15.00%	0.00%	0.00%	
171	4/4/05	\$1,181.20	\$10.37	\$0.72	\$0.26	\$3.35	0.71%	6.25%	5.88%	-18.75%	0.00%	
172	4/11/05	\$1,142.62	\$9.71	\$0.70	\$0.28	\$3.35	-3.27%	-6.36%	-2.78%	7.69%	0.00%	
173	4/18/05	\$1,152.12	\$9.55	\$0.74	\$0.28	\$2.90	0.83%	-1.65%	5.71%	0.00%	-13.43%	
174	4/25/05	\$1,156.85	\$10.44	\$0.74	\$0.35	\$3.20	0.41%	9.32%	0.00%	25.00%	10.34%	
175	5/2/05	\$1,171.35	\$10.69	\$0.74	\$0.37	\$3.00	1.25%	2.39%	0.00%	5.71%	-6.25%	
176	5/9/05	\$1,154.05	\$9.78	\$0.72	\$0.40	\$2.80	-1.48%	-8.51%	-2.70%	8.11%	-6.67%	
177	5/16/05	\$1,189.28	\$10.86	\$0.66	\$0.34	\$2.50	3.05%	11.04%	-8.33%	-15.00%	-10.71%	
178	5/23/05	\$1,198.78	\$10.67	\$0.66	\$0.31	\$2.50	0.80%	-1.75%	0.00%	-8.82%	0.00%	
179	5/31/05	\$1,196.02	\$10.20	\$0.72	\$0.34	\$2.30	-0.23%	-4.40%	9.09%	9.68%	-8.00%	
180	6/6/05	\$1,198.11	\$10.32	\$0.84	\$0.33	\$2.75	0.17%	1.18%	16.67%	-2.94%	19.57%	
181	6/13/05	\$1,216.96	\$10.38	\$0.78	\$0.35	\$2.50	1.57%	0.58%	-7.14%	6.06%	-9.09%	
182	6/20/05	\$1,191.57	\$10.25	\$0.86	\$0.34	\$2.00	-2.09%	-1.25%	10.26%	-2.86%	-20.00%	
183	6/27/05	\$1,194.44	\$10.35	\$0.86	\$0.39	\$2.03	0.24%	0.98%	0.00%	14.71%	1.50%	
184	7/5/05	\$1,211.86	\$11.09	\$0.80	\$0.33	\$2.05	1.46%	7.15%	-6.98%	-15.38%	0.99%	
185	7/11/05	\$1,227.92	\$11.15	\$0.76	\$0.30	\$2.05	1.33%	0.54%	-5.00%	-9.09%	0.00%	
186	7/18/05	\$1,233.68	\$10.35	\$0.70	\$0.30	\$2.10	0.47%	-7.17%	-7.89%	0.00%	2.44%	
187	7/25/05	\$1,234.18	\$10.26	\$0.62	\$0.30	\$2.05	0.04%	-0.87%	-11.43%	0.00%	-2.38%	
188	8/1/05	\$1,226.42	\$9.63	\$0.72	\$0.28	\$2.00	-0.63%	-6.14%	16.13%	-6.67%	-2.44%	
189	8/8/05	\$1,230.39	\$9.20	\$0.68	\$0.30	\$2.00	0.32%	-4.47%	-5.56%	7.14%	0.00%	
190	8/15/05	\$1,219.71	\$9.02	\$0.70	\$0.33	\$1.65	-0.87%	-1.96%	2.94%	10.00%	-17.50%	
191	8/22/05	\$1,205.10	\$9.01	\$0.74	\$0.35	\$1.82	-1.20%	-0.11%	5.71%	6.06%	10.30%	
192	8/29/05	\$1,218.02	\$9.04	\$0.64	\$0.33	\$1.50	1.07%	0.33%	-13.51%	-5.71%	-17.58%	
193	9/6/05	\$1,241.48	\$8.88	\$0.64	\$0.34	\$1.50	1.93%	-1.77%	0.00%	3.03%	0.00%	
194	9/12/05	\$1,237.91	\$9.02	\$0.58	\$0.38	\$1.50	-0.29%	1.58%	-9.38%	11.76%	0.00%	
195	9/19/05	\$1,215.29	\$8.53	\$0.66	\$0.31	\$1.50	-1.83%	-5.43%	13.79%	-18.42%	0.00%	

**Quantification of Total Cost of Equity and Company-Specific Risk  
Comparables as Determined by Charles Wilhoite**

Observation	Date	S&P 500	Weekly Price				S&P 500	AIQ	Weekly Return			
			AIQ	RadNet	Miracor	Sagemark			RadNet	Miracor	Sagemark	
196	9/26/05	\$1,228.81	\$8.55	\$0.68	\$0.29	\$1.90	1.11%	0.23%	3.03%	-6.45%	26.67%	
197	10/3/05	\$1,195.90	\$7.75	\$0.70	\$0.29	\$1.60	-2.68%	-9.36%	2.94%	0.00%	-15.79%	
198	10/10/05	\$1,186.57	\$6.99	\$0.68	\$0.28	\$1.50	-0.78%	-9.81%	-2.86%	-3.45%	-6.25%	
199	10/17/05	\$1,179.59	\$7.19	\$0.70	\$0.30	\$1.55	-0.59%	2.86%	2.94%	7.14%	3.33%	
200	10/24/05	\$1,198.41	\$6.97	\$0.86	\$0.25	\$1.75	1.60%	-3.06%	22.86%	-16.67%	12.90%	
201	10/31/05	\$1,220.14	\$6.20	\$0.92	\$0.25	\$1.55	1.81%	-11.05%	6.98%	0.00%	-11.43%	
202	11/7/05	\$1,234.72	\$5.70	\$1.00	\$0.28	\$1.35	1.19%	-8.06%	8.70%	12.00%	-12.90%	
203	11/14/05	\$1,248.27	\$5.58	\$0.98	\$0.22	\$1.50	1.10%	-2.11%	-2.00%	-21.43%	11.11%	
204	11/21/05	\$1,268.25	\$5.52	\$0.90	\$0.25	\$1.57	1.60%	-1.08%	-8.16%	13.64%	4.67%	
205	11/28/05	\$1,265.08	\$5.66	\$0.84	\$0.24	\$2.00	-0.25%	2.54%	-6.67%	-4.00%	27.39%	
206	12/5/05	\$1,259.37	\$5.64	\$0.86	\$0.22	\$1.75	-0.45%	-0.35%	2.38%	-8.33%	-12.50%	
207	12/12/05	\$1,267.32	\$5.99	\$0.78	\$0.22	\$1.75	0.63%	6.21%	-9.30%	0.00%	0.00%	
208	12/19/05	\$1,268.66	\$5.78	\$0.60	\$0.21	\$1.80	0.11%	-3.51%	-23.08%	-4.55%	2.86%	
209	12/27/05	\$1,248.29	\$5.95	\$0.54	\$0.22	\$1.50	-1.61%	2.94%	-10.00%	4.76%	-16.67%	
210	1/3/06	\$1,285.45	\$5.72	\$0.64	\$0.26	\$1.65	2.98%	-3.87%	18.52%	18.18%	10.00%	
211	1/9/06	\$1,287.61	\$5.53	\$0.64	\$0.24	\$1.85	0.17%	-3.32%	0.00%	-7.69%	12.12%	
212	1/17/06	\$1,261.49	\$5.25	\$0.64	\$0.26	\$1.54	-2.03%	-5.06%	0.00%	8.33%	-16.76%	
213	1/23/06	\$1,283.72	\$4.61	\$0.60	\$0.25	\$1.50	1.76%	-12.19%	-6.25%	-3.85%	-2.60%	
214	1/30/06	\$1,264.03	\$4.19	\$0.86	\$0.25	\$1.50	-1.53%	-9.11%	43.33%	0.00%	0.00%	
215	2/6/06	\$1,266.99	\$4.15	\$0.84	\$0.23	\$1.50	0.23%	-0.95%	-2.33%	-8.00%	0.00%	
216	2/13/06	\$1,287.24	\$5.15	\$0.80	\$0.25	\$1.40	1.60%	24.10%	-4.76%	8.70%	-6.67%	
217	2/21/06	\$1,289.43	\$5.67	\$0.90	\$0.23	\$1.35	0.17%	10.10%	12.50%	-8.00%	-3.57%	
218	2/27/06	\$1,287.23	\$5.95	\$0.76	\$0.24	\$1.35	-0.17%	4.94%	-15.56%	4.35%	0.00%	
219	3/6/06	\$1,281.42	\$5.88	\$0.88	\$0.29	\$1.30	-0.45%	-1.18%	15.79%	20.83%	-3.70%	
220	3/13/06	\$1,307.25	\$6.36	\$0.84	\$0.22	\$1.35	2.02%	8.16%	-4.55%	-24.14%	3.85%	
221	3/20/06	\$1,302.95	\$6.78	\$1.14	\$0.30	\$1.27	-0.33%	6.60%	35.71%	36.36%	-5.93%	
222	3/27/06	\$1,294.87	\$6.44	\$1.00	\$0.26	\$1.16	-0.62%	-5.01%	-12.28%	-13.33%	-8.66%	
223	4/3/06	\$1,295.50	\$5.95	\$1.66	\$0.22	\$1.30	0.05%	-7.61%	66.00%	-15.38%	12.07%	
224	4/10/06	\$1,289.12	\$5.84	\$1.70	\$0.24	\$1.30	-0.49%	-1.85%	2.41%	9.09%	0.00%	
225	4/17/06	\$1,311.28	\$4.96	\$2.30	\$0.29	\$1.30	1.72%	-15.07%	35.29%	20.83%	0.00%	
226	4/24/06	\$1,310.61	\$5.24	\$2.52	\$0.25	\$1.30	-0.05%	5.65%	9.57%	-13.79%	0.00%	
227	5/1/06	\$1,325.76	\$6.11	\$2.76	\$0.25	\$1.30	1.16%	16.60%	9.52%	0.00%	0.00%	
228	5/8/06	\$1,291.24	\$6.30	\$2.98	\$0.23	\$1.30	-2.60%	3.11%	7.97%	-8.00%	0.00%	
229	5/15/06	\$1,267.03	\$6.62	\$2.96	\$0.25	\$1.30	-1.87%	5.08%	-0.67%	8.70%	0.00%	
230	5/22/06	\$1,280.16	\$5.93	\$2.78	\$0.26	\$1.30	1.04%	-10.42%	-6.08%	4.00%	0.00%	
231	5/30/06	\$1,288.22	\$6.09	\$2.84	\$0.22	\$1.30	0.63%	2.70%	2.16%	-15.38%	0.00%	
232	6/5/06	\$1,252.30	\$5.76	\$3.40	\$0.17	\$1.16	-2.79%	-5.42%	19.72%	-22.73%	-10.77%	
233	6/12/06	\$1,251.54	\$5.53	\$3.40	\$0.16	\$1.30	-0.06%	-3.99%	0.00%	-5.88%	12.07%	
234	6/19/06	\$1,244.50	\$6.21	\$3.58	\$0.18	\$1.15	-0.56%	12.30%	5.29%	12.50%	-11.54%	
235	6/26/06	\$1,270.20	\$6.40	\$3.50	\$0.20	\$1.29	2.07%	3.06%	-2.23%	11.11%	12.17%	
236	7/3/06	\$1,265.48	\$6.88	\$3.74	\$0.20	\$1.10	-0.37%	7.50%	6.86%	0.00%	-14.73%	
237	7/10/06	\$1,236.20	\$6.23	\$3.34	\$0.17	\$1.05	-2.31%	-9.45%	-10.70%	-15.00%	-4.55%	
238	7/17/06	\$1,240.29	\$5.84	\$3.12	\$0.17	\$1.00	0.33%	-6.26%	-6.59%	0.00%	-4.76%	
239	7/24/06	\$1,278.55	\$6.28	\$3.32	\$0.19	\$0.99	3.08%	7.53%	6.41%	11.76%	-1.00%	
240	7/31/06	\$1,279.36	\$6.50	\$3.14	\$0.17	\$0.98	0.06%	3.50%	-5.42%	-10.53%	-1.01%	
241	8/7/06	\$1,266.74	\$6.13	\$3.18	\$0.16	\$0.75	-0.99%	-5.69%	1.27%	-5.88%	-23.47%	
242	8/14/06	\$1,302.30	\$6.42	\$3.16	\$0.16	\$0.72	2.81%	4.73%	-0.63%	0.00%	-4.00%	
243	8/21/06	\$1,295.09	\$6.50	\$4.00	\$0.13	\$0.94	-0.55%	1.25%	26.58%	-18.75%	30.56%	
244	8/28/06	\$1,311.01	\$6.69	\$4.80	\$0.14	\$0.94	1.23%	2.92%	20.00%	7.69%	0.00%	
245	9/5/06	\$1,298.92	\$8.18	\$5.26	\$0.12	\$0.94	-0.92%	22.27%	9.58%	-14.29%	0.00%	
246	9/11/06	\$1,319.66	\$7.92	\$4.98	\$0.11	\$0.69	1.60%	-3.18%	-5.32%	-8.33%	-26.60%	
247	9/18/06	\$1,314.78	\$8.21	\$5.06	\$0.11	\$0.70	-0.37%	3.66%	1.61%	0.00%	1.45%	
248	9/25/06	\$1,335.85	\$7.81	\$5.44	\$0.08	\$0.65	1.60%	-4.87%	7.51%	-27.27%	-7.14%	
249	10/2/06	\$1,349.59	\$7.91	\$5.38	\$0.08	\$0.53	1.03%	1.28%	-1.10%	0.00%	-18.46%	
250	10/9/06	\$1,365.62	\$8.06	\$5.28	\$0.08	\$0.55	1.19%	1.90%	-1.86%	0.00%	3.77%	
251	10/16/06	\$1,368.60	\$8.14	\$5.36	\$0.09	\$0.65	0.22%	0.99%	1.52%	12.50%	18.18%	
252	10/23/06	\$1,377.34	\$8.40	\$5.30	\$0.09	\$0.65	0.64%	3.19%	-1.12%	0.00%	0.00%	
253	10/30/06	\$1,364.30	\$7.72	\$5.00	\$0.09	\$0.65	-0.95%	-8.10%	-5.66%	0.00%	0.00%	
254	11/6/06	\$1,380.90	\$7.67	\$5.42	\$0.08	\$0.60	1.22%	-0.65%	8.40%	-11.11%	-7.69%	
255	11/13/06	\$1,401.20	\$6.28	\$5.20	\$0.07	\$0.55	1.47%	-18.12%	-4.06%	-12.50%	-8.33%	
256	11/20/06	\$1,400.95	\$6.07	\$5.12	\$0.06	\$0.55	-0.02%	-3.34%	-1.54%	-14.29%	0.00%	
257	11/27/06	\$1,396.71	\$5.95	\$4.90	\$0.06	\$0.59	-0.30%	-1.98%	-4.30%	0.00%	7.27%	
258	12/4/06	\$1,409.84	\$6.35	\$4.85	\$0.06	\$0.65	0.94%	6.72%	-1.02%	0.00%	10.17%	
259	12/11/06	\$1,427.09	\$6.39	\$4.54	\$0.05	\$0.65	1.22%	0.63%	-6.39%	-16.67%	0.00%	
260	12/18/06	\$1,410.76	\$6.51	\$4.55	\$0.05	\$0.65	-1.14%	1.88%	0.22%	0.00%	0.00%	
261	12/26/06	\$1,418.30	\$6.65	\$4.62	\$0.05	\$0.65	0.53%	2.15%	1.54%	0.00%	0.00%	

Quantification of Total Cost of Equity and Company-Specific Risk  
Comparables as Determined by Charles Wilhoite

Observation	Date	S&P 500	Weekly Price				Weekly Return				
			AIQ	RadNet	Miracor	Sagemark	S&P 500	AIQ	RadNet	Miracor	Sagemark
Statistical Analysis/Conclusions:											
							S&P 500	AIQ	RadNet	Miracor	Sagemark
Standard deviation							0.02	0.08	0.15	0.12	0.10
Total Beta (SDs/SDm)							1.00	4.44	7.74	6.36	5.18
Levered Beta							1.00	0.84	0.34	0.34	0.25
Income tax rate per Wilhoite (Exhibit 2-13)								37%	35%	35%	35%
% debt per Wilhoite (Exhibit 2-13)								64%	48%	88%	68%
% equity per Wilhoite (Exhibit 2-13)								36%	52%	12%	32%
Unlevered beta								0.40	0.21	0.06	0.11
R-square								4%	0%	0%	0%
1- R-square (unexplained by CAPM)								96%	100%	100%	100%
T-stat								3.11	0.71	0.87	0.78
Statistically significant								Yes	No	No	No
Market Capitalization (March 2007) per Yahoo!Finance.							\$397 M	\$189 M	\$585,000		\$6 M
Size Premium (SP) per SBBi, 2006 Yearbook, Valuation Edition							2.76%	6.36%	6.36%		6.36%
Equity Risk Premium (ERP) per Wilhoite							7.10%	7.10%	7.10%		7.10%
Company-specific Risk Premium (CSRP)							22.76%	46.19%	36.34%		28.60%
Risk-free rate per Wilhoite							4.90%	4.90%	4.90%		4.90%
Total Cost of Equity (TCOE)							36.42%	59.88%	50.03%		41.66%
Comment										Thinly-traded	Thinly-traded



## OPINION 5 – WILHOITE REPORT

Wilhoite imposes a hypothetical capital structure (85% equity and 15% debt) instead of the actual capital structure (100% equity and 0% debt). Doing so artificially and improperly increases alleged damages.

This opinion is based upon:

- 1) MRIA has no debt on its balance sheet. However, Wilhoite has assumed that its capital structure consists of 15% debt.
- 2) According to Wilhoite, MRIA's after-tax cost of debt is (5%) and its after-tax cost of equity is (14.1%). Given this relationship, any assumption which adds debt to the capital structure using a weighted average cost of capital (WACC) will result in a lower discount rate.<sup>32</sup>
- 3) In valuation if one uses a WACC rate, then one must also subtract the actual or implied debt, as appropriate, to calculate equity.
- 4) Lost profits flow to equity holders. Thus, Wilhoite should have used the higher cost of equity in calculating the present value of lost profits, or he should have subtracted the implied debt (when using the WACC) to calculate alleged lost profits to MRIA – just as he should have done if valuing the equity of MRIA.
- 5) According to a quote from Valuing a Business, The Analysis and Appraisal of Closely Held Companies, Fourth Edition, written by Pratt, Reilly, and Schweih on page 185:

*If the company is to be valued as it is (under the strict fair market value standard, assuming the capital structure will remain intact), then the amount of debt in the company's actual capital structure should be used.* (Emphasis added)

By logical extension, Wilhoite should have used the equity discount rate, instead of the WACC rate which would have resulted in lower alleged lost profits.

### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

---

<sup>32</sup> Assuming the after-tax cost of debt remains at 5% and financial distress at higher debt levels is not considered.

## OPINION 6 – WILHOITE REPORT

Wilhoite's claim on page 12 of his report that the *"indicated decrease in equity value of MRIA between 2001 and the current date presented in table 6 above represents a decline in the value of MRIA attributable to historical lost profits"* equal to \$32,487,000 is unreliable.

This opinion is based upon:

- 1) Had the following conclusions and/or problematic assumptions been changed or corrected, Wilhoite's valuation of the entities as of 2006 would have been materially higher, resulting in less reduction of equity between 2001 and 2006:
  - a) In Exhibit 2 (MRIC) and Exhibit 3 (MRIA), Wilhoite weighted the Capitalized Economic Earnings Method, the lowest indication of value by far for both entities, by 60%.
  - b) In Exhibit 2-6, Wilhoite applies faulty logic in his decision to disregard a control premium for MRIC. Quoting footnote (a) to Exhibit 2-6:

*"A control premium was considered unnecessary due to the larger size of the guideline companies compared to MRI Center based on revenue and total assets, and MRI Center's historical revenue and profitability decline since 2002."*

Control premiums have little to do with the relative size between companies. Moreover, if anything, a potential acquirer may find an acquisition of MRIC attractive given the recent decline in financial and operating performance and be willing to pay a control premium to get the opportunity to turn-around an under-performing operation. In other words, if an organization is already operating at maximum effectiveness and efficiency, then a control premium may not be warranted – not the other way around.

- c) In Exhibit 3-6, Wilhoite again applies faulty logic in his decision regarding a control premium for MRIM. Quoting footnote (a) to Exhibit 3-6:

*"In the selection of the control premium, we considered, among other factors, differences in size and operating focus of MRI Mobile and the guideline publicly traded companies. The average control premium for transactions in the Health Services industry in 2005 was 12.4 percent based on five transactions. Considering MRI Mobile's size, and recent revenue and profitability growth decline, it is our opinion that a reasonable control premium adjustment is 5 percent."*

For reasons stated above the facts of the matter at hand point to an increase in the control premium for MRIM, rather than to a decrease from the average.

- d) In Exhibit 2-6, Wilhoite weighted the revenue approach, an obvious outlier to the other valuation measures, by 30%. Had he weighted it 0%, not an unlikely judgment since it was less than book value, Wilhoite would have arrived at a materially higher indication of value for MRIC.

- e) Wilhoite selected valuation multiples either at the low end or much lower than the low end of the guideline company multiples range<sup>33</sup> in Exhibit 2-6. These selections were made in spite of the following observations for MRIC relative to the guidelines:
- i. Exhibit 2-7a: MRIC had the strongest balance sheet in 2005 – by far.
  - ii. Exhibit 2-7b: MRIC had the best operating performance in 2005.
  - iii. Exhibit 2-7c: MRIC had the best current ratio, quick ratio, pretax income/average equity, pretax income to sales, net income/average equity, net income/sales, and cash flow to sales ratios, among other strong ratios in 2005.
  - iv. Exhibit 2-9b: MRIC's latest twelve month's ("LTM") EBIT (earnings before interest and taxes) was not the lowest.
  - v. Exhibit 2-9f: MRIC's EBIT return on TBVIC for the latest twelve months was not the lowest.
- f) Wilhoite selected valuation multiples lower than the median, in some cases well below the median, of the guideline company multiples range in Exhibit 3-6. These selections were made in spite of the following observations for MRIM relative to the guidelines:
- i. Exhibit 3-7a: MRIM had the strongest balance sheet in 2005.
  - ii. Exhibit 3-7b: MRIM had the second to best operating performance in 2005.
  - iii. Exhibit 3-7c: MRIM tied for the best current ratio, had the best EBIT and EBITDA interest coverage ratio, equity/total capital ratio, pretax income/average equity, and net income/average equity, among other strong ratios in 2005.
  - iv. Exhibit 3-9e: MRIM's LTM return on revenue for EBIT and EBITA, last fiscal year ("LFY") return on revenue for EBIT and EBITDA, and 5-year average return on revenue for EBIT and EBITDA well exceed their respective medians – yet Wilhoite selected medians for MRIM well below the guideline's multiples – an obvious inconsistency.

#### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

---

<sup>33</sup> Wilhoite claimed in his deposition on pages 190 – 191 that "the company is declining significantly in the five years through the valuation date, and it has some challenging operating circumstances." We agree, however, it appears that little or no weight was given to the following observations.

## OPINION 7 – WILHOITE REPORT

MRIA is required to mitigate its alleged damages and react to competitive forces. Since Wilhoite grows alleged lost profits every year through the end of the alleged damage periods, it appears that he has implicitly assumed that MRIA will do nothing (contrary to its duty) or is unable to do anything (unlikely) to lower the alleged losses.

### SUPPORTING DATA

This opinion relied upon the above noted sources and information and/or documents identified in Table 1.

TABLE 1

## SUPPORTING DATA

- 1) First Amended Counterclaim and Third Party Complaint.
- 2) MRIA Associates' First Supplemental Responses to SARMC's Fourth Set of Interrogatories and Seventh Set of Request for Production of Documents.
- 3) MRIA's Second Supplemental Responses To Interrogatory No. 7.
- 4) Expert Report of Bruce P. Budge dated March 12, 2007 and the workpaper file produced at his deposition.
- 5) Expert Opinions of Charles A. Wilhoite dated March 12, 2007 and excerpts from workpaper file produced at his deposition.
- 6) Research on publicly traded companies and the S&P 500.
- 7) Expert Report of Robert A. Bell, PhD dated March 6, 2007.
- 8) An Economic Analysis of MRI Services in the Boise Area by ECONorthwest dated March 19, 2007.
- 9) Transcript of Deposition of Charles A. Wilhoite, CPA, CMA, ASA dated April 2, 2007.
- 10) Transcript of Deposition of Grant Chamberlain dated September 27, 2006 including selected exhibits thereto.
- 11) Transcript of Deposition of Manfred R. Steiner dated March 9, 2007 and related exhibits.
- 12) Fair Market Value Analysis of the Business Enterprise and Stockholders' Equity of MRI Associates, LLP as of April 1, 2004 prepared by Wellspring Valuation, Ltd.
- 13) Report of Douglas M. Branson dated March 12, 2007.
- 14) Various documents from IMI, including information from its web-site and Chart of Accounts.
- 15) General research on the imaging industry, including documents obtained from Wilhoite's work papers.
- 16) Applicable public filings by firms in the imaging industry.
- 17) MRI Limited Partnership Agreement.
- 18) MRI / SARMC Lease Agreement.
- 19) MRIA Articles of Partnership.
- 20) IMI Operating Agreement.
- 21) Professional Services Agreement (Radiology Services) between SARMC and GSR.

- 22) Various financial statements for IMI covering 1999 through 2006.
- 23) Form 1065 Intermountain Medical Imaging, LLC – 2005.
- 24) Various financial statements for MRIC generally covering 1989 through 2005.
- 25) Various financial statements for MRIM generally covering 1990 through 2005.
- 26) Various financial statements for MRIA covering parts of 2003 through 2006.
- 27) Form 1065 MRI Associates, LLP – 2005,
- 28) MRIA general ledger reports.
- 29) Price Waterhouse documents.
- 30) Shattuck Hammond documents.
- 31) Interviews and telephone conversations with Jeff Cliff and Hallie Braun of IMI.
- 32) Various articles about healthcare, reimbursements and medical imaging.
- 33) The Miller GAAP Guide and other official accounting pronouncements such as Statements of the Financial Accounting Standards Board.
- 34) SBBI Valuation Edition 2006 Yearbook.
- 35) Sources cited in the body of the report and in various footnotes.

PRIOR DEPOSITION OR TRIAL TESTIMONY

The following is a list of cases in which Dennis Reinstein has given testimony in either deposition or at trial in the last four years.

- 1) Zions First National Bank v. G Matthew Thomas, et al.

Deposition - Boise, Idaho – August 2003

- 2) Southern Idaho Medical Group, LLC v. Southern Idaho Ambulatory Surgery Center and William C. Fitzhugh

Trial – Twin Falls, Idaho – August 2004

- 3) Idaho State Lottery Commission – In RE: Bingo Licenses Revocation of - Sons and Daughters of Idaho, Inc. and Snake River Association of The USA Amateur Boxing Federation, Inc.

Hearing – Boise, Idaho – August 2004

- 4) David A. Brown v. Bates Rents, Inc. et al.

Trial – Boise, Idaho – September 2004

- 5) Russi v. Russi

Deposition – Boise, Idaho – September 2004

- 6) Hugh Callow v. Riverview Marina, Inc. dba Custom Weld Marina

Trial – Boise, Idaho – November 2004

- 7) Interstate Group, LLC v. Robert Swikert et al.

Deposition – Boise, Idaho – March 2005

Arbitration Panel – St. Louis, Missouri – April 2005

- 8) Nathan Ogden v. St. Luke's RMC

Deposition – Boise, Idaho – June 2005

Trial – Boise, Idaho – September 2005

- 9) Marty Mark Robison et al. v. Bateman-Hall, Inc. et al.

Deposition – Boise, Idaho – July 2005

- 10) Boise Tower Associates, LLC v. Washington Capital Joint Master Trust Mortgage Income Fund, et al.

Deposition – Boise, Idaho – August 2005

PRIOR DEPOSITION OR TRIAL TESTIMONY (continued)

- 11) Ward W. Leis v. Herman's Carpet Service, Inc. and Morris W. Brown  
Deposition – Boise, Idaho – October 2005
- 12) Ray Martin and Robert & Lois Short v. Shirley S. Grant  
Deposition – Boise, Idaho – February 2006
- 13) Idaho State Department of Agriculture v. TFM, LLC, et al.  
Deposition – Boise, Idaho – February 2006  
Deposition – Boise, Idaho – April 2006
- 14) Richard Gomez v. Mastec North America, Inc., et al.  
Deposition – Boise, Idaho – February 2006  
Trial – Boise, Idaho – August 2006
- 15) United States Bankruptcy Court  
In re: Steven Paul Cady and Connie Jean Cady  
Trial – Boise, Idaho – August 2006
- 16) Roy Hall v. Glens Ferry Grazing Association  
Trial – Boise, Idaho – August 2006
- 17) MSN Communications, Inc. v. CompuNet, Inc., et al.  
Deposition – Boise, Idaho – October 2006
- 18) Serenic Software, Inc. v. Protean Technologies, Inc., et al.  
Deposition – Boise, Idaho – October 2006
- 19) Shannon L. Allison, et al., v. Daniel R. Torrez et al.  
Deposition – Boise, Idaho – November 2006
- 20) Chris Matey, et al., v. Ford Motor Company et al.  
Deposition – Boise, Idaho – November 2006
- 21) Michael P. Fisher, et al., v. Christian Cusimano, et al.  
Deposition – Boise, Idaho – March 2007



## QUALIFICATIONS

See curriculum vitae attached.

## COMPENSATION

Hourly rate of \$240 plus out-of-pocket costs.

## PUBLICATIONS/PRESENTATIONS

The following is a list of publications Dennis Reinstein has authored or co-authored over the last 10 years.

- 1) Use of Premiums and Discounts in Business Valuations – presented to the Boise Estate Planning Council on January 13, 1997.
- 2) Understanding Financial Statements and Basic Accounting Principles – presented to attorneys on behalf of the Idaho Law Foundation, Inc. on January 6, 1998.
- 3) Issues in County Financial Management – presented at the Idaho Supreme Court 1999 Clerks / Judges Conference on February 8, 1999.
- 4) Selling Your Business – Non-Family Valuation and Tax Issues, presented to the National Auctioneers Association – 52nd Auctioneers Conference and Show on July 20, 2001.
- 5) Litigation Questions, Problems & Solutions: The Bench, Bar and Clients Speak Out. Participant on the client panel – presented to the Idaho State Bar Litigation Section on January 10, 2003.
- 6) Using Business Valuations To Build An Estate – presented to the Boise Estate Planning Council on November 3, 2003.
- 7) Business Valuation Basics – presented to the Boise Wells Fargo Business Bankers meeting on December 5, 2003.
- 8) Business Valuation Basics: How to Use Valuation/Financial Theory to Increase the Value of Your Business – presented to TechHelp, Manufacturers Luncheon on January 28, 2005.
- 9) Tax Planning for Sales of Real Estate – sponsored by Premier Alliance on March 16, 2005.
- 10) Valuation and Credit Analysis: Similarities and Differences – presented to Boise area U.S. Bank business bankers on May 11, 2005.
- 11) The Guideline Publicly Traded Company Method and The Market Value of "Invested" Capital: Should Market Value of "Stakeholder" Capital be the Appropriate Reference – Business Valuation Review; Summer, 2006.

**DENNIS R. REINSTEIN, CPA/ABV, ASA, CVA**

**Birthdate:**



**Education:**

University of Idaho  
BS Agri-business, 1974  
BS Business (Accounting), 1975

**Certification:**

Licensed in Idaho as CPA, 1976  
CVA designation, 1995  
ABV designation, 2001  
ASA designation, 2003

**Career**

**Experience:**

Hooper Cornell, PLLC

Partner January, 2002 - Present

Presnell-Gage Accounting & Consulting

Firm-wide supervisory responsibilities for business consulting services and electronic data processing services

Boise office

Partner	January, 1996 - December 31, 2001
Partner-in-charge	October, 1991 - January, 1996
Partner	July, 1989 - September, 1991

Moscow office

Partner-in-charge	October, 1983 - June, 1989
-------------------	----------------------------

Lewiston office

Partner	May, 1980 - September, 1983
Manager	1979 - 1980
Staff Accountant	1975 - 1978

Professional experience includes:

- (1) Valuation of small businesses and professional practices.
- (2) Assistance to clients with the analysis of business operations and significant business transactions. These include negotiations on purchase and sale of a business or business segments, including assistance with valuation of business entities.
- (3) Design and assist with implementation of financial accounting and control systems for various clients served by the firm.
- (4) Supervision of accounting and auditing services provided by the firm's professional staff and consultation on procedures and methods of providing client services.
- (5) Member of team conducting review of complex mainframe and microcomputer accounting systems.
- (6) Co-authored and presented eight-hour course on cash management. Presented other client educational seminars and seminars to other service professionals such as bankers and attorneys.
- (7) Duties as a partner-in-charge included the responsibility for managing an office and personnel in accordance with firm policies.

*DENNIS H. REINSTEIN, CPA/ABV, ASA, CVA (Continued)*

*Career  
Experience  
continued:*

Farmer's Home Administration - Assistant County Supervisor, 1974.

Duties included:

- (1) Evaluation of credit applications and preparation of application packages for review and approval.
- (2) Residential real estate and farm appraisals.

*Professional  
Memberships  
and Activities:*

Idaho Society of CPAs, member

Chairman of Management of an Accounting Practice Committee

Member of Committees on

Public Relations

Continuing Professional Education

Relations with Bankers

Northern Chapter of Idaho Society of CPAs, president

American Institute of CPAs, member

American Society of Appraisers, member - Business Valuation

National Association of Certified Valuation Analysts, member

Continental Association of CPAs, member, Past Chair of Litigation Services Committee and Information Technology Committee

*Public Service  
and Community  
Activities:*

Boise Chamber of Commerce

Member of Small Business Recognition Sub-committee

Member of Small Business Education and Advisory Sub-committee

Chair of Small Business Committee

Member of Garden City Chamber Council

Discovery Center of Idaho, Vice President of Board

Kiwanis

Moscow Chamber of Commerce

Past-President, V. Pres. Treasurer & Board member

Moscow Executive Association

Moscow Rotary

Lewiston Chamber of Commerce

Lewiston Jaycees

Held various offices & a member of Board of Directors

Prepared and presented accounting seminars for Human Advancement's Inc., Minority Contractors Awareness Seminars and the Lewis-Clark Homebuilders Association.

Taught night classes in bookkeeping at the Clarkston Branch of Walla Walla Community College.

***EXHIBIT B***

01105

Warren E. Jones, ISB No. 1193  
Neil D. McFeeley, ISB No. 3564  
EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD  
300 North Sixth Street  
Post Office Box 1368  
Boise, Idaho 83701  
Telephone: (208) 344-8535  
Facsimile: (208) 344-8542

Attorneys for INTERMOUNTAIN MEDICAL IMAGING, LLC,  
GEM STATE RADIOLOGY, LLP, and  
IMAGING CENTER RADIOLOGISTS, LLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation, )  
Plaintiff, )

Case No. CV OC 0408219D

vs. )

MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )  
Defendant. )

**EXPERT WITNESS DISCLOSURE  
FOR MARY RIVER, M.D.  
PURSUANT TO RULE 26(b)(4)(A)(i)  
OF THE IDAHO RULES OF CIVIL  
PROCEDURE**

MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )  
Counterclaimant, )

vs. )

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation; SAINT )  
ALPHONSUS REGIONAL MEDICAL )  
CENTER, )  
Counterdefendants. )

MRI ASSOCIATES, LLP, an Idaho limited liability partnership,	)
	)
Third Party Plaintiff,	)
	)
vs.	)
	)
INTERMOUNTAIN MEDICAL IMAGING, LLC, an Idaho limited liability company;	)
GEM STATE RADIOLOGY, LLP, an Idaho limited liability partnership; and IMAGING CENTER RADIOLOGISTS, LLP, an Idaho limited liability partnership,	)
	)
Third Party Defendants.	)
	)

---

1. I, Mary River, M.D., make this expert witness disclosure pursuant to the provisions of Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure to explain my opinions and the bases and reasons for such opinions.

2. I am a neurologist licensed to practice medicine in the State of Idaho. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A and made a part hereof as if set forth at length herein. I have practiced medicine, specializing in the sub-specialty of neurology, in and around Boise, Idaho, for the past seven years.

3. As part of my profession practicing neurology, I often have need for the services of radiologists to obtain images of patients through one or more different modalities of radiologic imaging. I also use and rely upon the skill and expertise of such radiologists to interpret such images and provide reports, both verbal and written, to me for use in my treatment of patients. It is critical to be able to rely on the accuracy of such radiologic interpretations.

4. In the course of my years of practice in Boise, Idaho, I have had occasion to refer patients to MRI Center of Idaho for MRI scans during the time that radiologists employed by St. Alphonsus Radiology Group and/or Gem State Radiology read and interpreted radiologic scans taken at MRI Center of Idaho.

5. After the opening of Intermountain Medical Imaging, I referred patients to that institution to obtain images for various radiologic modalities, which were also read or interpreted by radiologists employed at Gem State Radiology.

6. After I learned that MRI Center of Idaho terminated Gem State Radiology as the reading radiologists for MRI Center for non-hospital patients, I ceased referring outpatient patients to MRI Center of Idaho and referred said patients to IMI. The reason for my change in referrals was due to the skill, competency and quality of radiologists at Gem State Radiology who no longer read outpatient images at MRI Center of Idaho but read images taken at IMI.

7. My referrals to IMI had nothing to do with the association of IMI with Saint Alphonsus Hospital, but rather was due solely to the quality of the images taken at IMI and the skill, competency, reliability and service of the reading radiologists at Gem State Radiology.

8. I recall receiving a letter from Gem State Radiology informing me that as of a particular date images taken at MRI Center of Idaho would no longer be available on the Saint Alphonsus PACS system. That information would be of no significance to me in determining where to refer a patient for radiologic imaging compared to which radiologist would be reading or interpreting such images.

9. Based upon my education, training and experience, in my opinion the group of radiologists at Gem State Radiology is of the highest quality, including many of the sub-specialty

trained radiologists who have received fellowships at some of the nation's top universities, which was the primary reason for my referrals to Intermountain Medical Imaging.

10. In my opinion, the group of radiologists employed at Gem State Radiology has an outstanding reputation for quality and service in the Treasure Valley area.

11. My qualifications are set forth in the attached curriculum vitae.

12. Attached as Exhibit B is a list of all publications I have authored within the preceding 10 years.

13. I am being compensated for my time spent in connection with this litigation at the rate of \$ 300<sup>00</sup>/hr.

14. I have not testified as an expert at trial or by deposition within the preceding four years.



---

Mary River, M.D.





***Curriculum Vitae For:***

**Mary E. River, M.D.**

**222 North 2<sup>nd</sup> Street, Suite 103**

**Boise, ID 83702**

**Office: 208-381-3699**

**Fax: 208-381-3697**

**Education:**

- 1985-1988      Residency, Northwestern University Neurology Program PGY2, PGY3, PGY4, Including 3 month rotations in:  
                    Pediatric Neurology Children's Memorial Hospital Chicago, Illinois  
                    Adult Neurology Evanston Hospital Evanston, Illinois  
                    General Neurology Lakeside Veterans Administration Hospital Chicago, Illinois
- 1984-1985      Flexible Internship, Northwestern University Physical Medicine & Rehabilitation (prior to transfer to Neurology Program)
- 1980-1984      Medical School, Northwestern University
- 1977-1980      College, University of California Berkeley, Berkeley, California
- 1976-1977      College, University of Chicago, Chicago, Illinois

**Work Experience:**

- 2000 - Present      Private Practice, Boise, ID
- 1988 -2000        Visalia Medical Clinic, Visalia, California
- 1987- 1988        Northwestern University Institute of Psychiatry, Chemical Dependence Program ("Moonlighting")

**Credentials:** Medical License      Idaho #M8111

**Professional Membership:**

California Medical Association, Delegate, 1991-1994 (Alternate Delegate, 1990)  
Tulare County Medical Society  
National Headache Foundation  
American Academy of Neurology  
American Medical Association  
CALPAC-AMPAC

**Hospital Affiliations:**

- 2000-Present      St. Alphonsus Regional Medical Center
- 2000-Present      St. Luke's Regional Medical Center

**Research:**

***Sub-Investigator***

A Long-term, Open-label, Flexible-dose Study of the Efficacy and Safety of Xxxx in Patients with Idiopathic Restless Legs Syndrome

**01111**

***Curriculum Vitae For:***  
**Mary E. River, M.D.**

Pharmacogenomics Blood Sampling Protocol to Obtain DNA in a Reference Population of Patients Diagnosed with Restless Legs Syndrome

A Multicenter, Open label, Phase IV Study to Assess the Tolerability, Safety, and Effectiveness of Switching from Xxxx to Xxxx in Epilepsy Subjects within a Community Based Population

A Multicenter, Randomized, Placebo-controlled, Double-Blind, Parallel-Group Trial to Evaluate Early Efficacy and Tolerability of Xxxx in the Acute Treatment of Adult Subjects with Migraine

Multicenter, double-blind, randomized, placebo-control, parallel-group study to evaluate the safety and efficacy of three dose groups of Xxxx in patients with Neuropathic pain due to diabetic neuropathy.

Efficacy and Safety Study of the Oral Direct Xxxx Compared with Dose-Adjusted Xxx in the Prevention of Stroke and Systemic Embolic Events in Patients with Atrial Fibrillation

**Publications:**

Antonio Luque, MD, Ph.D.; Henry M. Furneaux, Ph.D.; Reuven Ferzinger, AB; Marc K. Rosenblum, MD; Shirley H. Wray, MD, Ph.D.; S. Clifford Schold, Jr., MD; Michael J. Glantz, MD; Kurt A. Jaekle, MD; Haim Biran, MD; Martin Lesser, MD; William A. Paulsen, MD; Mary E. River, MD; and Jerome B. Posner, MD. An Antibody Associated with Paraneoplastic Opsoclonus and Breast Cancer. Annals of Neurology, March 1991

P.L. Williams; R. Johnson; H. Einstein; Pappagianis; U. Slager, F.T. Koster; J.J. Erron; J. Morrison; J. Aguet; M. E. River. Vasculitic and Encephalitic Complications Associated with C. Immitis Infection of the Central Nervous System in Man. Review of Infectious Diseases.



**Mary E. River, M.D.**

**Publications:**

Antonio Luque, MD, Ph.D.; Henry M. Furneaux, Ph.D.; Reuven Ferzinger, AB; Marc K. Rosenblum, MD; Shirley H. Wray, MD, Ph.D.; S. Clifford Schold, Jr., MD; Michael J. Glantz, MD; Kurt A. Jaekle, MD; Haim Biran, MD; Martin Lesser, MD; William A. Paulsen, MD; Mary E. River, MD; and Jerome B. Posner, MD. An Antibody Associated with Paraneoplastic Opsoclonus and Breast Cancer. Annals of Neurology, March 1991

P.L. Williams; R. Johnson; H. Einstein; Pappagianis; U. Slager, F.T. Koster; J.J. Erron; J. Morrison; J. Aguet; M. E. River. Vasculitic and Encephalitic Complications Associated with C. Immitis Infection of the Central Nervous System in Man. Review of Infectious Diseases.

***EXHIBIT C***

01115

Warren E. Jones, ISB No. 1193  
Neil D. McFeeley, ISB No. 3564  
EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD  
300 North Sixth Street  
Post Office Box 1368  
Boise, Idaho 83701  
Telephone: (208) 344-8535  
Facsimile: (208) 344-8542

Attorneys for INTERMOUNTAIN MEDICAL IMAGING, LLC,  
GEM STATE RADIOLOGY, LLP, and  
IMAGING CENTER RADIOLOGISTS, LLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE, )	
INC., an Idaho nonprofit corporation, )	
Plaintiff, )	Case No. CV OC 0408219D
vs. )	
MRI ASSOCIATES, LLP, an Idaho limited )	<b>EXPERT WITNESS DISCLOSURE</b>
liability partnership, )	<b>FOR BRUCE ANDERSEN, M.D., Ph.D.,</b>
Defendant. )	<b>F.A.C.S., PURSUANT TO RULE</b>
_____ )	<b>26(b)(3)(A)(i) OF THE IDAHO</b>
MRI ASSOCIATES, LLP, an Idaho limited )	<b>RULES OF CIVIL PROCEDURE</b>
liability partnership, )	
Counterclaimant, )	
vs. )	
SAINT ALPHONSUS DIVERSIFIED CARE, )	
INC., an Idaho nonprofit corporation; SAINT )	
ALPHONSUS REGIONAL MEDICAL )	
CENTER, )	
Counterdefendants. )	
_____ )	

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Third Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING,  
LLC, an Idaho limited liability company;  
GEM STATE RADIOLOGY, LLP, an Idaho  
limited liability partnership; and IMAGING  
CENTER RADIOLOGISTS, LLP, an Idaho  
limited liability partnership,

Third Party Defendants.

1. I, Bruce Andersen, M.D., make this expert witness disclosure pursuant to the provisions of Rule 26(b)(3)(A)(i) of the Idaho Rules of Civil Procedure to explain my opinions and the bases and reasons for such opinions.

2. I am a neurosurgeon licensed to practice medicine in the State of Idaho. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A and made a part hereof as if set forth at length herein. I have practiced medicine, specializing in the sub-specialty of neurology, in and around Boise, Idaho, since 1999.

3. As part of my profession practicing neurosurgery, I often have need for the services of radiologists to obtain images of patients through one or more different modalities of radiologic imaging. I also use and rely upon the skill and expertise of such radiologists to interpret such images and provide reports, both verbal and written, to me for use in my treatment of patients. It is critical to be able to rely on the accuracy of such radiologic interpretations.



4. In the course of my years of practice in Boise, Idaho, I have had occasion to refer patients to MRI Center of Idaho for MRI scans during the time that radiologists employed by St. Alphonsus Radiology Group and/or Gem State Radiology read and interpreted radiologic scans taken at MRI Center of Idaho.

5. After the opening of Intermountain Medical Imaging, I referred almost all of my outpatient patients to that institution to obtain images for various radiologic modalities, which were also read or interpreted by radiologists employed at Gem State Radiology, because of the better quality of scans performed at IMI.

6. My referrals to IMI had nothing to do with the association of IMI with Saint Alphonsus Hospital, but rather was due solely to the quality of the images taken at IMI and the skill, competency, reliability and service of the reading radiologists at Gem State Radiology.

7. Based on my education, training and years of experience practicing neurosurgery in the Boise area, it is my opinion that neurosurgeons as well as other physicians are quite interested in and concerned with the skill, education, competence and reliability of radiologists interpreting MRI's and other radiologic images.

8. I do not recall receiving a letter from Gem State Radiology informing me that as of a particular date images taken at MRI Center of Idaho would no longer be available on the Saint Alphonsus PACS system. That information would have been of no significance to me in determining where to refer my patients for radiologic imaging.

9. Based upon my education, training and experience in the practice of neurosurgery in Boise, Idaho since 1999, it is my opinion that most physicians referring patients for radiological images consider the quality of the images produced and the skill, competence, education, experience and reliability of the radiologists interpreting said images as the key factors in deciding on referrals,

(excluding insurance regulations and self-referral) rather than upon such matters as hospital affiliation.

10. Based upon my education, training and experience, in my opinion the group of neuroradiologists at Gem State Radiology is of the highest quality, including many of the sub-specialty trained radiologists who have received fellowships at some of the nation's top universities, which was the primary reason for my referrals to Intermountain Medical Imaging.

11. To the extent not already set forth above, the basis and reasons for my opinions are my education, training, experience in the practice of neurosurgery in the Boise area, and conversations and familiarity with numerous other referring physicians who have shared with me information confirming that the facts and opinions specified herein are similar to their own opinions regarding the criteria for referrals of patients for radiological imaging.

12. In my opinion, the group of radiologists employed at Gem State Radiology has an outstanding reputation for quality and service in the Treasure Valley area.

13. I have practiced at New York University and the University of Arkansas Hospitals and, in my opinion, the radiologists at Gem State Radiology are comparable or better in their knowledge, expertise and service.

14. I have found the MRI images taken at IMI to be uniformly excellent with very little need for repeat imaging. In addition, the radiologists at Gem State Radiology are excellent about communicating with me regarding MRI examinations and MRI results, ensuring better accuracy and patient care.


15. My qualifications are set forth in the curriculum vitae, which is attached hereto as Exhibit A.

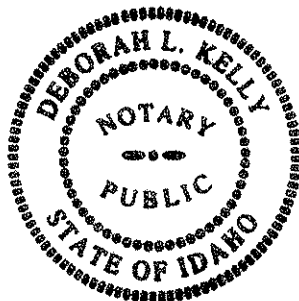
16. In Exhibit A is a list of all publications I have authored within the preceding 10 years.

17. I am being compensated for my time spent in connection with this litigation at the rate specified in Exhibit B.

18. The only case in which I have testified as an expert at trial or by deposition within the preceding four years is a criminal case in which I testified for the State of Idaho in State Court in Ada County.

Dated this 23 day of April, 2007

  
Bruce Andersen, M.D.



expires  
1/5/2010


Deborah L. Kelly

***Exhibit A***

**01121**

## CURRICULUM VITAE

### Bruce James Andersen, MD, PhD, FACS

Name	Bruce James Andersen
Date of Birth	 Oak Park, Illinois
Office Address	NeuroScience Associates 6140 West Curtisian Suite 400 Boise, Idaho 83704 208-367-3500 brucande@sarmc.org
Military Service	Commander, USNR (retired)
Medical Licensure	State of Florida State of Oregon State of Idaho
Certification	National Board of Medical Examiners, 1983 American Board of Neurological Surgery, 1996 Fellow, American College of Surgeons, 2002
<b>EDUCATION:</b>	
1974-1978	Wabash College Crawfordsville, Indiana B.A. <i>Magna Cum Laude</i> , Biology
1978-1982	Northwestern University Medical School Chicago, Illinois M.D.
1987-1989	Virginia Commonwealth University Richmond, Virginia Ph.D., Physiology
<b>POST-GRADUATE TRAINING:</b>	
7-82 to 6-83	Intern, General Surgery Medical College of Virginia
7-83 to 12-86	Resident, Neurosurgery Medical College of Virginia
1-87 to 12-88	Graduate Student, Physiology Virginia Commonwealth University

1-89 to 6-90	Neurosurgical Fellow University of South Florida
7-90 to 12-91	Chief Resident, Neurosurgery Oregon Health Sciences University

**CLINICAL APPOINTMENTS:**

1-91 to 12-91	Clinical Instructor, Neuroanatomy Oregon Health Sciences University Portland, Oregon
4-92 to 6-95	Assistant Professor, Neurosurgery University of Arkansas for Medical Sciences Little Rock, Arkansas
	Assistant Professor, Physiology & Biophysics University of Arkansas for Medical Sciences Little Rock, Arkansas
7-95 to 3-99	Chairman, Department of Neurosurgery Director, Brooklyn Neuroscience Center The Brooklyn Hospital Center of New York University Brooklyn, New York
	Assistant Professor, Neurosurgery New York University Medical Center New York, New York
4-99 to present	Department of Neurosurgery St. Alphonsus Regional Medical Center St. Lukes Regional Medical Center Boise, Idaho

**ACADEMIC & ADMINISTRATIVE APPOINTMENTS:**

President, Idaho State Neurosurgical Society, 2004  
Chairman, Department of Neurosurgery, 2004  
Chairman, Idaho Neurological Institute, 2003  
Fellow, American College of Surgeons, 2002  
Advanced Trauma Life Support Instructor, 2002  
Co-Director, RUNN Neurobiology Review Course, 2000  
Member, Idaho Neurological Institute Board of Directors, 1999  
Director, Brooklyn Neuroscience Center, The Brooklyn Hospital Center, 1996  
Chairman, Department of Neurosurgery, The Brooklyn Hospital Center, 1995  
Assistant Professor of Neurosurgery, New York University School of Medicine, 1995  
Instructor, RUNN Neurobiology Review Course, 1995

Arkansas Children's Hospital Trauma Steering Committee, 1994  
Member, Arkansas Center for Neuroscience, 1994  
Treasurer, Society for Neuroscience, Arkansas Chapter, 1994  
State Sponsor, Think First Injury Prevention Program of Arkansas, 1994  
Chairman, UAMS Helicopter Sub-Committee, 1993  
Member, American Brain Injury Consortium, 1993  
Executive Committee, Joint Section on Neurotrauma and Critical Care, Spinal Cord Injury Committee, 1993  
Instructor, Pediatric Advanced Life Support, 1993  
Chief, Neurotrauma Division, UAMS, 1992  
Director, Neurosurgery ICU, UAMS, 1992  
UAMS Trauma Committee, 1992  
Critical Care Committee, UAMS, 1992  
Faculty, Neuroscience Course, UAMS, 1992  
Assistant Professor, Department of Neurosurgery, UAMS, 1992  
Assistant Professor, Physiology & Biophysics, UAMS, 1992

**PROFESSIONAL SOCIETIES:**

American Association of Neurologic Surgeons  
Congress of Neurologic Surgeons  
American Brain Injury Consortium  
AANS-CNS Joint Section on Neurotrauma and Critical Care  
Neurotrauma Society  
International Society of Cerebral Blood Flow and Metabolism  
American College of Surgeons  
American Medical Association  
Society for Neuroscience

**RESEARCH INTERESTS:**

Neurophysiologic alterations resulting from head injury and ischemia  
Alterations in neuronal energy metabolism following trauma and seizure activity  
Rheologic properties of blood and their manipulation for use in vasospastic states  
Neurohumoral responses to head injury  
Head injury as an inciting factor in the development of Alzheimers type neuropathology  
Bone graft fragment size as a function of fusion rate  
Energetics of membrane ionic homeostasis and axoplasmic flow in squid giant axons

**CLINICAL INTERESTS:**

Cerebrovascular Disease  
Acute Stroke Management  
Complex Spine Disorders & Spinal Instrumentation  
Brain & Spinal Cord Trauma

**GRANTS and CLINICAL PROTOCOLS:**

Co-Principal Investigator; "Mechanical Brain Injury & Therapy", Cerebral Metabolism Section, Medical College of Virginia Program Project Grant, NIH #P-50-NFS-12587 1988

Tartar Trust Fellowship (Medical Research Foundation of Oregon), "Development of a Computerized, Three Dimensional, Rotational Neuroanatomy Atlas"; 1991

American Medical Association-Education and Research Fund, "Purchase of Neuroanatomy Teaching Programs"; 1992

Cluster Investigator, Arkansas Neurobiology Research Center, Developmental Neurobiology Cluster, "Mid-Latency Auditory Evoked Potentials as a Measure of Brain Stem Integrity"; NSF-EPSCoR; \$30,000; 1992

Principal Investigator, Hornick Foundation Grant, "Development of an In Vivo Optical Monitoring System for Evaluation of Intracellular Oxygenation"; 1992

Principal Investigator, UAMS Foundation Fund Grant, "Investigation of Neuronal Energy Metabolism and Establishment of a Microelectrode Recording Facility"; 1992

Co-Principal Investigator, Arkansas Neurobiology Research Center, Neurophysiology Core, "Alterations in the P1 Auditory Evoked Potential Following Closed Head Injury"; NSF-EPSCoR; 1993

Principal Investigator, Clinical Protocol, "Multicenter Study to Evaluate the Safety and Effectiveness of PEG-Superoxide Dismutase in Severe Closed Head Injury", Sterling Winthrop Pharmaceuticals Research Division; 1993

Principal Investigator, Clinical Protocol, "A Placebo Controlled Trial to Evaluate the Safety, Tolerability, and Potential Efficacy of Initiating Intravenous Administration of CGS-19755 to Serious Head Trauma Patients Prior to Surgery", Ciba-Geigy Pharmaceuticals Division; 1993

Principal Investigator, Clinical Protocol "Multicenter 6 Month Follow-up Evaluation of Outcome, Return To Work, and Health Care Utilization in Subjects Receiving PEG-Superoxide Dismutase Following Severe Closed Head Injury", Sterling Winthrop Pharmaceuticals Research Division; 1994

Principal Investigator, Pilot Study, "Energetics of Axoplasmic Transport and Ionic Homeostasis in Squid Giant Axon"; 1994

Co-Investigator, Phase 3 Clinical Trial, "Efficacy and Safety Evaluation of a Single Intravenous Dose of Dexanabinol in Patients Suffering from Severe Traumatic Brain Injury"; 2003

#### **PUBLICATIONS:**

Andersen B, Marmarou A, Unterberg A, Clarke G: Luxury energy production caused by mechanical brain injury. **CNS Annual Meeting, Scientific Program**, 142, 1987. (Abstract)

Andersen BJ, Unterberg AW, Clarke GD, Marmarou A: The metabolic response to brain trauma: Effects of post-traumatic hypoventilation on *in vivo*  $^{31}\text{P}$  magnetic resonance spectroscopy, CBF, CMRO<sub>2</sub>, and CMRGlucose. **AANS Annual Meeting, Scientific Program**, 232-233, 1987. (Abstract)



Andersen BJ, Unterberg AW, Clarke GD, Marmarou A: Effect of post-traumatic hypoventilation on cerebral energy metabolism. **J Neurosurg** 68: 601-607, 1988.

Andersen BJ, Marmarou A: Isolated stimulation of glycolysis following traumatic brain injury. In: **Intracranial Pressure VII**, Hoff J (ed). Berlin: Springer-Verlag, 1989, pp. 575-580.

Andersen BJ, Marmarou A: Energy compartmentalization in neural tissue. **J Cerebral Blood Flow and Metabolism** 9: Suppl 1, S386, 1989.

Andersen BJ: Alterations and compartmentalization of cerebral energy metabolism. **Ph.D. Thesis, Virginia Commonwealth University**, 1989.

Andersen BJ, Goldhagen P, Cahill DW: Aneurysmal bone cyst of the odontoid process. **Neurosurgery** 28: 592-594, 1991.

Andersen BJ, Burchiel KJ: Surgical treatment of low back pain and sciatica. In: **Neurosurgery Clinics of North America** 2(4), Loeser JD (ed). Philadelphia: W.B.Saunders, 1991, pp. 921-931.

Andersen BJ, Marmarou A: Functional compartmentalization of energy production in neural tissue. **Brain Research** 585: 190-195, 1992.

Andersen BJ, Marmarou A: Post-traumatic selective stimulation of glycolysis. **Brain Research** 585: 184-189, 1992.

Andersen, BJ, Pravdenkova SV: A survivable closed head injury model in weanling rats. In: **Intracranial Pressure IX**, Nagai H (ed). Berlin: Springer-Verlag, 1994, pp 534-537.

Andersen BJ, Pravdenkova SV, Griffin WST: Closed head injury as a model of Alzheimer disease. In: **Intracranial Pressure IX**, Nagai H (ed). Berlin: Springer-Verlag, 1994, pp 343-346.

Andersen BJ, Pravdenkova SV, Skidmore GA: Use of low dose mannitol in vasospastic states. In: **Intracranial Pressure IX**, Nagai H (ed). Berlin: Springer-Verlag, 1994, pp 390-392.

Andersen BJ, Miyazato H, Cobb M, Skinner RD, Garcia-Rill E. Middle latency evoked potentials in a model of head injury in the rat. **Society for Neuroscience Abstracts**, 1995. (abstract)

Andersen, BJ, Stringer WG: Imaging After Spinal Trauma. In: **Neurotrauma**, RK Narayan, JE Wilberger, JT Povlishock (eds), McGraw Hill, 1996.

Andersen BJ, Russell A, Vognet KV: Bone slurry fusion technique. **J Neurosurgery**, *submitted*.

Andersen BJ: Use of lag screw technique for reduction of Hangman's fractures. **J Neurosurgery**, *submitted*.

Boop FA, Andersen BJ: The Emergent Management of Intracranial Fluid Collections. In:

**Illustrated Textbook of Pediatric Emergency and Critical Care Procedures**, D Fiser (ed), Mosby, Philadelphia, 1993.

Cobb MA, Husain M, Andersen BJ, Al-Mefty O: Significance of proliferating cell nuclear antigen in predicting intracranial meningioma recurrence. **J Neurosurgery** 84: 85-90, 1996.

Cobb MA, Husain M, Andersen BJ, Al-Mefty O: Ki-67 and intracranial meningiomas: Correlation with histology and inability to predict tumor recurrence. **J Neurosurgery**, *submitted*

Grigoriantz OO, Pravdenkova SV, Andersen BJ, Desiderio DM (1995) Alteration of opioid peptide concentrations in the rat pituitary following survivable closed head injury. **Neurochemical Research** 20: 827-831.

Inao S, Marmarou A, Clarke GD, Andersen BJ, Fatouros PP, Young HF: Production and clearance of lactate from brain tissue, cerebrospinal fluid, and serum following experimental brain injury. **J Neurosurg** 69: 736-744, 1988.

Marmarou A, Andersen BJ: Effect of a sustained insult on post-traumatic cerebral energy metabolism. **J Cerebral Blood Flow and Metabolism** 9: Suppl 1, S225, 1989.

Pravdenkova SV, Basnakian AG, James SJ, Andersen BJ: DNA fragmentation and nuclear endonuclease activity in rat brain after severe closed head injury. **Brain Research**, 729(2): 287-293, 1996.

Sawyer JR, Sammartino G, Husain M, Lewis JM, Andersen B, Boop FA: Ring chromosome 12 resulting from nonrandom telomeric associations with the short arm of chromosome 15 in a cerebellar astrocytoma. **Genes, Chromosomes & Cancer** 8 (2): 69-73, 1993.

Shima K, Marmarou A, Yamamoto T, Unterberg A, Andersen B, Jenkins L, Hayes R: High level fluid percussion is a model of brain stem injury. **Society for Neuroscience, 16th Annual Meeting, Abstracts Part 2**: 267.2, 1986. (Abstract)

Thibault LE, Meaney DF, Andersen BJ, Marmarou A: Biomechanical aspects of a fluid percussion model of brain injury. **J Neurotrauma** 9(4): 311-322, 1993.

Unterberg AW, Andersen BJ, Clarke GD, Marmarou A: The metabolic response to brain trauma: Effects of post traumatic hypoventilation on *in vivo* <sup>31</sup>P magnetic resonance spectroscopy (MRS), CBF, oxygen-, and glucose-consumption. **J Cerebral Blood Flow and Metabolism** 7: suppl 1, S634, 1987.

Unterberg AW, Andersen BJ, Clarke GD, Marmarou A: Cerebral energy metabolism following fluid percussion brain injury in cat. **J Neurosurg** 68: 594-600, 1988.

Unterberg AW, Andersen BJ, Clarke GD, Marmarou A: Cerebral energy metabolism during post-traumatic hypoventilation. In: **Intracranial Pressure VII**, Hoff J (ed). Berlin: Springer-Verlag, 1989, pp. 758-760.

**AWARDS:**

Resident Paper Award, Neurosurgical Society of the Virginias, 1987.

Second Runner-Up, General Motors Neurotrauma Resident Research Award, 1987.

First Place Poster, Trauma Section, American Association of Neurological Surgeons, Annual Meeting, 1987.

First Runner-Up, Forbes Graduate Research Honors Competition, Virginia Commonwealth University, 1988.

Young Scientists' Bursary, International Society for Cerebral Blood Flow and Metabolism Annual Meeting, 1989.

First Place, Basic Science Section, Southern Neurosurgical Society Annual Meeting, 1990.

First Place, Resident Paper Award, OHSU School of Medicine, Sommer Memorial Lectures, 1991.

First Place, Resident Paper Award, North Pacific Society of Neurosurgery & Neurology, 1991.

***Exhibit B***



## Attorney Fee Schedule

Photocopy of medical records per attorney's request

pages 1-20 \$ 15.00

21-35 \$ 25.00

over 35 \$1 per page

note, photocopy of medical records for disability determination is FIXED by law at \$10

Attorney conference (phone or in person)

per half hour, prepaid for 1st 1/2 hour \$ 250.00

Review of records and narrative, per 1/2 hour \$ 250.00

Depositions, per hour, ALL (hrs) to be paid in advance \$ 1,500.00

Other possible related service prices

IME \$ 1,500.00

PPI \$ 1,500.00

note, disability forms are prepared by Irene and there is no charge.

Testimony (prep./stand) \$400 to \$1,000 per hour

half day \$5,000

***EXHIBIT D***

**01131**

Warren E. Jones, ISB No. 1193  
 Neil D. McFeeley, ISB No. 3564  
 EBERLE, BERLIN, KADING, TURNBOW,  
 MCKILVEEN & JONES, CHTD  
 300 North Sixth Street  
 Post Office Box 1368  
 Boise, Idaho 83701  
 Telephone: (208) 344-8535  
 Facsimile: (208) 344-8542

Attorneys for INTERMOUNTAIN MEDICAL IMAGING, LLC,  
 GEM STATE RADIOLOGY, LLP, and  
 IMAGING CENTER RADIOLOGISTS, LLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE, )  
 INC., an Idaho nonprofit corporation, )

Plaintiff, )

vs. )

MRI ASSOCIATES, LLP, an Idaho limited )  
 liability partnership, )

Defendant. )

Case No. CV OC 0408219D

EXPERT WITNESS DISCLOSURE  
 FOR PETER REEDY, M.D.  
 PURSUANT TO RULE 26(b)(4)(A)(i)  
 OF THE IDAHO RULES OF CIVIL  
 PROCEDURE

MRI ASSOCIATES, LLP, an Idaho limited )  
 liability partnership, )

Counterclaimant, )

vs. )

SAINT ALPHONSUS DIVERSIFIED CARE, )  
 INC., an Idaho nonprofit corporation; SAINT )  
 ALPHONSUS REGIONAL MEDICAL )  
 CENTER, )

Counterdefendants. )

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Third Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING,  
LLC, an Idaho limited liability company;  
GEM STATE RADIOLOGY, LLP, an Idaho  
limited liability partnership; and IMAGING  
CENTER RADIOLOGISTS, LLP, an Idaho  
limited liability partnership,

Third Party Defendants.

1. I, Peter Reedy, M.D., make this expert witness disclosure pursuant to the provisions of Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure to explain my opinions and the bases and reasons for such opinions.

2. I am a neurosurgeon licensed to practice medicine in the State of Idaho. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A and made a part hereof as if set forth at length herein. I have practiced medicine, specializing in neurosurgery, in and around Boise, Idaho, for the past 16 years. Prior to that, I practiced neurosurgery in Pocatello, Idaho for 5 years.

3. As part of my profession practicing neurosurgery, I often have need for the services of radiologists to obtain images of patients through one or more different modalities of radiologic imaging. I also use and rely upon the skill and expertise of such radiologists to interpret such images and provide reports, both verbal and written, to me for use in my treatment of patients. It is critical to be able to rely on the accuracy of such radiologic interpretations, in order to make appropriate diagnoses and in order to give my patients all the options for treatment.



4. In the course of my years of practice in Boise, Idaho, I have had occasion to refer patients to MRI Center of Idaho for MRI scans during the time that radiologists employed by St. Alphonsus Radiology Group and/or Gem State Radiology read and interpreted radiologic scans taken at MRI Center of Idaho.

5. After the opening of Intermountain Medical Imaging, I also referred patients to that institution to obtain images for various radiologic modalities, which were also read or interpreted by radiologists employed at Gem State Radiology. The reason for my change in referrals was due to the quality of service of IMI and the skill, competency, availability and quality of radiologists at Gem State Radiology.

6. My referrals to IMI had nothing to do with the association of IMI with Saint Alphonsus Hospital, but rather was due solely to the quality of service at IMI and the quality of the images taken at IMI and the skill, competency, reliability and service of the reading radiologists at Gem State Radiology as well as the diminishing service available at MRI Center of Idaho.

7. Based on my education, training and years of experience practicing neurosurgery in the Boise area, it is my opinion that neurosurgeons as well as other physicians refer patients for MRI's or other radiologic imaging modalities based primarily upon the skill, education, competence and reliability and availability of radiologists interpreting such images.

8. I do not recall receiving a letter from Gem State Radiology informing me that as of a particular date images taken at MRI Center of Idaho would no longer be available on the Saint Alphonsus PACS system. That information would be of no significance to me in determining where to refer a patient for radiologic imaging compared to which radiologists would be reading or interpreting such images.

9. Based upon my education, training and experience in the practice of neurosurgery in Boise, Idaho over the past 16 years, it is my opinion that physicians referring patients for radiological images consider the quality of service rendered, the quality of the images produced, and the skill, competence, education, experience, availability and reliability of the radiologists interpreting said images as the key factors in deciding on referrals, rather than upon such matters as hospital affiliation.

10. Based upon my education, training and experience, in my opinion the group of radiologists at Gem State Radiology is of the highest quality, including many of the sub-specialty trained radiologists who have received fellowships at some of the nation's top universities, which is the primary reason for my referrals to Intermountain Medical Imaging.

11. To the extent not already set forth above, the basis and reasons for my opinions are my education, training, experience in the practice of neurosurgery in the Boise area, and conversations and familiarity with numerous other referring physicians who have shared with me information confirming that the facts and opinions specified herein are similar to their own opinions regarding the criteria for referrals of patients for radiological imaging.

12. In my opinion, the group of radiologists employed at Gem State Radiology has an outstanding reputation for quality and service in the Treasure Valley area.

13. My qualifications are set forth in the attached curriculum vitae.

14. A list of the publications I have authored in the last 10 years is set forth in my curriculum vitae attached hereto.

15. I am not being compensated for my time spent in connection with this litigation.

17. I have testified 6 times in the last 4 years in depositions as a treating physician but not as a retained expert witness. HIPPA regulations prohibit me from identifying those patients.

Dated this 22 day of April, 2007

  
\_\_\_\_\_  
Peter Reedy, M.D.



## CURRICULUM VITAE

**D. PETER REEDY, MD**

999 North Curtis Road

Suite 307

Boise, Idaho 83706-1333

**Date of Birth:**



**Place of Birth:**

Omaha, Nebraska

**Education:**

B.S., Creighton University  
Omaha, 1973

M.D., Creighton University School of Medicine  
Omaha, 1978

**Pre-internship:**

Kinsman Neurological Research Institute  
University of British Columbia  
Canada  
October 1977- February 1978  
Research Fellow

**Internship:**

Cleveland Clinic Foundation  
Rotating Surgical Intern  
1978-1979

**Residency:**

Resident in Neurological Surgery  
Cleveland Clinic Foundation  
1979-1982

Registrar in Surgical Neurology  
The Royal Infirmary of Edinburgh  
Scotland  
June 1982 - December 1982

Resident in Neurosurgery  
Royal Hospital for Sick Children  
Toronto, Ontario, Canada  
April - July 1983

Curriculum Vitae - D. Peter Reedy, MD

Page 2

**Residency:** Chief Resident Neurosurgery  
Cleveland Clinic Foundation  
1982 - 1984

**Awards:** Reagents Alternate Scholarship  
University of Nebraska, Lincoln  
1966

**Societies:** Idaho Medical Association  
Ada County Medical Society  
American Medical Association

**Exhibitions:** "Oligodendroglioma - The Effectiveness of Radiotherapy,"  
Congress of Neurological Surgeons, Houston, Texas,  
October 5-10, American Association of Neurological  
Surgeons Congress of Neurological Surgeons  
1980

"The Effects of Verapamil on Focal Cerebral Ischemia,"  
American Association of Neurological Surgeons,  
Washington, D.C., April 25-28, 1983

"The Effects of Verapamil, Thromboxane Synthetase  
Inhibitor, Chlorpromazine and Propranolol on Acute Focal  
Cerebral Ischemia," The 11<sup>th</sup> International Symposium on  
Cerebral Blood Flow and Metabolism, Paris, France, June  
20-24, 1983

"Magnetic Medical Resonance of the Spine,"  
American Association of Neurological Surgeons,  
San Francisco, California, April 8-12, 1984

"Use of Verapamil in Focal Cerebral ischemia,"  
Souther Medical Association, Baltimore, Maryland,  
November 1983

01139

Curriculum Vitae - D. Peter Reedy, MD

Page 3

**Publications:**

"The Effects of Verapamil on Acute Focal Cerebral Ischemia." Reedy, DP; Capraro, JA; Little, JR; Slugg, RM; and Lesser, RP.  
Neurosurgery: 12:272-276 (March)

"The Role of Radiation Therapy in the Treatment of Cerebral Oligodendrogliomas - An Analysis of 57 Cases and Literature Review." Reedy, DP; Bay, JW; Hahn, JF;  
Neurosurgery: 13:499-503

"The Effects of Verapamil, Thromboxane Synthetase Inhibitor, Chlorpromazine and Propranolol on Acute Focal Cerebral Ischemia." Latchaw, J; Reedy, DP; Capraro, JA; Little, JR: Journal Cerebral Blood Flow and Metabolism (suppl.) Raven Press, New York, 1983

"Disc Space Infection." Reedy, DP and Bay, JW: Surgical Rounds, Neurosurgery, 1983

"The Effects of Propranolol on Acute Focal Cerebral Ischemia." Capraro, JA; Reedy, DP; and Little, JR: Stroke, Vol. 15 #3, 486-491, 1984

"Motor Evoked Potentials in the Dog: Effects of Global Ischemia on Spinal Cord and Peripheral Nerve Signals." Konrad, PE: Reveals a pleasant gentleman/lady in no acute distress.; Tacker, WA; Levy, WJ; Reedy, DP; Cook, JR; and Geddes, LA: Neurosurgery 20:117-124, 1987

**Presentation:**

"Quality of Life and Decisions About Acute Neurosurgical Intervention." Reedy, MD, D. P.; Seibert, PhD, Pennie S.; Basom, BSN MBA, Jean; Zimmerman, MD FACS, Christian G. Congress of Neurological Surgeons; San Antonio, TX, 2000.

**Staff Privileges:**

Saint Alphonsus Regional Medical Center  
Boise, Idaho

Saint Luke's Regional Medical Center  
Boise, Idaho

Curriculum Vitae - D. Peter Reedy, MD  
Page 4

**Positions held:**

Chairman (Elect): February 1997 - February 1999  
Joint Department of Neurology/Neurosurgery  
St. Alphonsus and St. Luke's Regional Medical Centers  
Chairman of Department: February 1999 - February 2001

01141



***EXHIBIT E***

01142

Warren E. Jones, ISB No. 1193  
Neil D. McFeeley, ISB No. 3564  
EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD  
300 North Sixth Street  
Post Office Box 1368  
Boise, Idaho 83701  
Telephone: (208) 344-8535  
Facsimile: (208) 344-8542

Attorneys for INTERMOUNTAIN MEDICAL IMAGING, LLC,  
GEM STATE RADIOLOGY, LLP, and  
IMAGING CENTER RADIOLOGISTS, LLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE,  
INC., an Idaho nonprofit corporation,

Plaintiff,

vs.

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Defendant.

Case No. CV QC 0408219D

EXPERT WITNESS DISCLOSURE  
FOR SAMUEL GIBSON, M.D.  
PURSUANT TO RULE 26(b)(4)(A)(i)  
OF THE IDAHO RULES OF CIVIL  
PROCEDURE

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Counterclaimant,

vs.

SAINT ALPHONSUS DIVERSIFIED CARE,  
INC., an Idaho nonprofit corporation; SAINT  
ALPHONSUS REGIONAL MEDICAL  
CENTER,

Counterdefendants.

EXPERT WITNESS DISCLOSURE PURSUANT TO RULE 26(b)(4)(A)(i) OF THE IDAHO RULES OF CIVIL PROCEDURE  
PAGE 1  
00147569.000

01143

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Third Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING,  
LLC, an Idaho limited liability company;  
GEM STATE RADIOLOGY, LLP, an Idaho  
limited liability partnership; and IMAGING  
CENTER RADIOLOGISTS, LLP, an Idaho  
limited liability partnership,

Third Party Defendants.

1. I, Samuel Gibson, M.D. make this expert witness disclosure pursuant to the provisions of Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure to explain my opinions and the bases and reasons for such opinions.

2. I am a gastroenterologist licensed to practice medicine in the State of Idaho. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A and made a part hereof as if set forth at length herein. I have practiced medicine, specializing in the sub-specialty of gastroenterology, in and around Boise, Idaho, for the past 16 years.

3. As part of my profession practicing gastroenterology, I often have need for the services of radiologists to obtain images of patients through one or more different modalities of radiologic imaging. I also use and rely upon the skill and expertise of such radiologists to interpret such images and provide reports, both verbal and written, to me for use in my treatment of patients. It is critical to be able to rely on the accuracy of such radiologic interpretations.

4. In the course of my years of practice in Boise, Idaho, I have had occasion to refer patients to MRI Center of Idaho for MRI scans during the time that radiologists employed by St.

EXPERT WITNESS DISCLOSURE PURSUANT TO RULE 26(b)(4)(A)(i) OF THE IDAHO RULES OF CIVIL PROCEDURE  
PAGE 2  
00147569.000

Alphonsus Radiology Group and/or Gem State Radiology read and interpreted radiologic scans taken at MRI Center of Idaho.

5. After the opening of Intermountain Medical Imaging, I referred patients to that institution to obtain images for various radiologic modalities, which were also read or interpreted by radiologists employed at Gem State Radiology.

6. After I learned that MRI Center of Idaho terminated Gem State Radiology as the reading radiologists for MRI Center for non-hospital patients, I began referring outpatient patients to IMI. The reason for my change in referrals was due to the skill, competency and quality of radiologists at Gem State Radiology who no longer read outpatient images at MRI Center of Idaho but read images taken at IMI.

7. My referrals to IMI had nothing to do with the association of IMI with Saint Alphonsus Hospital, but rather was due solely to the skill, competency, reliability and service of the reading radiologists at Gem State Radiology.

8. Based on my education, training and years of experience practicing gastroenterology in the Boise area, it is my opinion that gastroenterologists as well as other physicians refer patients for MRI's or other radiologic imaging modalities based primarily upon the skill, education, competence and reliability of radiologists interpreting such images.

9. I recall receiving a letter from Gem State Radiology informing me that as of a particular date images taken at MRI Center of Idaho would no longer be available on the Saint Alphonsus PACS system. That information would be of no significance to me in determining where to refer a patient for radiologic imaging compared to which radiologist would be reading or interpreting such images.

EXPERT WITNESS DISCLOSURE PURSUANT TO RULE 26(B)(4)(A)(I) OF THE IDAHO RULES OF CIVIL PROCEDURE  
PAGE 3  
00147569.000

10. Based upon my education, training and experience in the practice of gastroenterology in Boise, Idaho over the past 16 years, it is my opinion that physicians referring patients for radiological images consider the quality of the images produced and the skill, competence, education, experience and reliability of the radiologists interpreting said images as the key factors in deciding on referrals, rather than upon such matters as hospital affiliation.

11. Based upon my education, training and experience, in my opinion the group of radiologists at Gem State Radiology is of the highest quality, including many of the sub-specialty trained radiologists who have received fellowships at some of the nation's top universities, which was the primary reason for my referrals to Intermountain Medical Imaging.

12. To the extent not already set forth above, the basis and reasons for my opinions are my education, training, experience in the practice of gastroenterology in the Boise area, and conversations and familiarity with numerous other referring physicians who have shared with me information confirming that the facts and opinions specified herein are similar to their own opinions regarding the criteria for referrals of patients for radiological imaging.


13. In my opinion, the group of radiologists employed at Gem State Radiology has an outstanding reputation for quality and service in the Treasure Valley area.

14. My qualifications are set forth in the attached curriculum vitae.

15. I have not authored any publications within the preceding 10 years.

16. I am not being compensated for my time spent in connection with this litigation.

17. I have not testified as an expert at trial or by deposition within the preceding four years.

  
Samuel Gibson, M.D.

***Exhibit A***

**01147**

**CURRICULUM VITAE**

**NAME:** Samuel Scott Gibson, M.D.

**DATE AND PLACE**

**OF BIRTH:** Denison, Iowa, July 31, 1956

**PERSONAL:**

Married (Jamie Gibson)  
Children: Emma, age 8 and Tess, age 2

**OFFICE ADDRESS:** Digestive Health Clinic, LLC/Idaho Endoscopy Center  
6259 W. Emerald  
Boise, Idaho 83704  
Telephone: (208) 489-1900

**EDUCATION:**

University: University of South Dakota, B.S., 1978  
Medical School: University of South Dakota, 1983

**POSTGRADUATE TRAINING:**

Internship: Maricopa Medical Center, Internal Medicine, 1984  
Residency: Maricopa Medical Center, Internal Medicine, 1986  
Fellowship: Maricopa Medical Center, Gastroenterology, 1990

**PRIVATE PRACTICE, Gastroenterology:** Boise, Idaho, 1990

**MEDICAL LICENSURE:** Idaho # M-5763

**BOARD CERTIFICATION:**

Internal Medicine	Certificate #108867	September 10, 1986
Gastroenterology	Certificate #108867	November 5, 1991
	Recertification	November 11, 2001

**HOSPITAL AFFILIATIONS:**

St. Alphonsus Regional Medical Center	Boise, Idaho
Active Staff 1990 - present	
St. Luke's Regional Medical Center	Boise, Idaho
Active Staff 1990 - present	

**EXPERIENCE:**

Boise Gastroenterology Associates, P.A.  
Maricopa County Medical Center, Staff Emergency Physician,  
1986-1988

01148

**CURRICULUM VITAE**

**Samuel Scott Gibson, M.D.**

**Page 2**

**PROFESSIONAL ACTIVITIES:**

Idaho Medical Association  
Ada County Medical Society  
American Gastroenterology Association

**HOSPITAL ACTIVITIES:**

St. Alphonsus Regional Medical Center, Chairman, Endoscopy  
Committee, 1992-1994  
Idaho Elk's Rehabilitation Hospital, Medical Records Committee  
Family Practice Residency Teaching  
St. Alphonsus Regional Medical Center, Chairman, Internal  
Medicine Department, Current

Updated: 122104

**01149**



***EXHIBIT F***

**01150**

Warren E. Jones, ISB No. 1193  
 Neil D. McFeeley, ISB No. 3564  
 EBERLE, BERLIN, KADING, TURNBOW,  
 MCKLVEEN & JONES, CHTD  
 300 North Sixth Street  
 Post Office Box 1368  
 Boise, Idaho 83701  
 Telephone: (208) 344-8535  
 Facsimile: (208) 344-8542

Attorneys for INTERMOUNTAIN MEDICAL IMAGING, LLC,  
 GEM STATE RADIOLOGY, LLP, and  
 IMAGING CENTER RADIOLOGISTS, LLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE, )  
 INC., an Idaho nonprofit corporation, )  
 Plaintiff, )

Case No. CV OC 0408219D

vs. )

MRI ASSOCIATES, LLP, an Idaho limited )  
 liability partnership, )  
 Defendant. )

EXPERT WITNESS DISCLOSURE  
 FOR MARK C. MEIER, M.D.  
 PURSUANT TO RULE 26(b)(4)(A)(i)  
 OF THE IDAHO RULES OF CIVIL  
 PROCEDURE

MRI ASSOCIATES, LLP, an Idaho limited )  
 liability partnership, )

Counterclaimant, )

vs. )

SAINT ALPHONSUS DIVERSIFIED CARE, )  
 INC., an Idaho nonprofit corporation; SAINT )  
 ALPHONSUS REGIONAL MEDICAL )  
 CENTER, )

Counterdefendants. )

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Third Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING,  
LLC, an Idaho limited liability company;  
GEM STATE RADIOLOGY, LLP, an Idaho  
limited liability partnership; and IMAGING  
CENTER RADIOLOGISTS, LLP, an Idaho  
limited liability partnership,

Third Party Defendants.

1. I, MARK C. MEIER, M.D., make this expert witness disclosure pursuant to the provisions of Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure to explain my opinions and the bases and reasons for such opinions.

2. I am an orthopedic surgeon licensed to practice medicine in the State of Idaho. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A and made a part hereof as if set forth at length herein. I have practiced medicine, specializing in the specialty of orthopedics, in and around Boise, Idaho, for the past 15 years.

3. As part of my profession practicing orthopedics, I often have need for the services of radiologists to obtain images of patients through one or more different modalities of radiologic imaging. I also use and rely upon the skill and expertise of such radiologists to interpret such images and provide reports, both verbal and written, to me for use in my treatment of patients. It is critical to be able to rely on the accuracy of such radiologic interpretations.

4. In the course of my years of practice in Boise, Idaho, I have had occasion to refer patients to MRI Center of Idaho for MRI scans during the time that radiologists employed by Sr.

Alphonsus Radiology Group and/or Gem State Radiology read and interpreted radiologic scans taken at MRI Center of Idaho.

5. After the opening of Intermountain Medical Imaging, I referred patients to that institution to obtain images for various radiologic modalities, which were also read or interpreted by radiologists employed at Gem State Radiology.

6. After I learned that MRI Center of Idaho terminated Gem State Radiology as the reading radiologists for MRI Center for non-hospital patients, I ceased referring outpatient patients to MRI Center of Idaho and referred said patients to IMI. The reason for my change in referrals was due to the skill, competency and quality of radiologists at Gem State Radiology who no longer read outpatient images at MRI Center of Idaho but read images taken at IMI.

7. My referrals to IMI had nothing to do with the association of IMI with Saint Alphonsus Hospital, but rather was due solely to the quality of the images taken at IMI and the skill, competency, reliability and service of the reading radiologists at Gem State Radiology.

8. Based on my education, training and years of experience practicing orthopedics in the Boise area, it is my opinion that orthopedic surgeons as well as other physicians refer patients for MRI's or other radiologic imaging modalities based primarily upon the skill, education, competence and reliability of radiologists interpreting such images.

9. I recall receiving a letter from Gem State Radiology informing me that as of a particular date that outpatient images taken at MRI Center of Idaho would no longer be available on the Saint Alphonsus PACS system. That information would be of no significance to me in determining where to refer a patient for radiologic imaging compared to which radiologist would be reading or interpreting such images.

10. Based upon my education, training and experience in the practice of orthopedics in Boise, Idaho over the past 15 years, it is my opinion that physicians referring patients for radiological images consider the quality of the images produced and the skill, competence, education, experience and reliability of the radiologists interpreting said images as the key factors in deciding on referrals, rather than upon such matters as hospital affiliation.

11. Based upon my education, training and experience, in my opinion the group of radiologists at Gem State Radiology is of the highest quality, including many of the sub-specialty trained radiologists who have received fellowships at some of the nation's top universities, which was the primary reason for my referrals to Intermountain Medical Imaging.

12. To the extent not already set forth above, the basis and reasons for my opinions are my education, training, experience in the practice of orthopedics in the Boise area, and conversations and familiarity with numerous other referring physicians who have shared with me information confirming that the facts and opinions specified herein are similar to their own opinions regarding the criteria for referrals of patients for radiological imaging.

13. In my opinion, the group of radiologists employed at Gem State Radiology has an outstanding reputation for quality and service in the Treasure Valley area.

14. My qualifications are set forth in the attached curriculum vitae.

15. Attached as Exhibit B is a list of all publications I have authored within the preceding 10 years.

16. I am being compensated for my time spent in connection with this litigation at the rate of \$776 per hour for the first hour and \$550 for each additional hour.

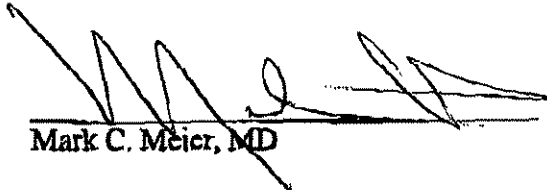
04-23-2007 13:58 From-EBERLE BERLIN  
Page 006

From-208 367 2877  
+2083448542

Received 04-23-2007 15:58  
T-756 P.006/006 F-488

17. I have testified 2 times in the last four years as a treating physician but not as a retained expert witness. HIPPA regulations prohibit me from identifying those patients.

Dated: April 23, 2007



Mark C. Meier, MD



Curriculum Vitae  
Mark Condon Meier M.D.

Occupation: Orthopaedic surgeon with Orthopaedic Associates since 1992

Birth: Memphis, Tennessee April 20<sup>th</sup>, 1954

Early Childhood: Grew up on a farm in Southwest Georgia, raising cattle, growing pecans, peanuts, corn and, other crops.

High School: Westover High School, Albany, Georgia 1969- 1972

College: Oxford College of Emory University, Oxford, Georgia  
1972 - 1974 AA Arts  
University of Georgia, Athens, Georgia  
1974 - 1977 BS Zoology, Magna Cum Laude

College Activities: Co- director of the Office to Promote Independence of Disabled Students,  
Student government.  
Alpha Epsilon Delta, Premedical Honor Society

Medical School: Medical College of Georgia, Augusta, Georgia  
1977 -1981, Medical Degree

Medical School Activities: Lange Publishers Award, for outstanding freshman  
C.D. Whitaker Scholarship, for academic achievement  
Vice President Medical school class  
President Georgia Student Health Association  
Alpha Omega Alpha Honors Society

Internship: Medical University of South Carolina, Charleston, South Carolina  
1981 - 1982 General Surgery

Emergency Medicine: Phoebe Putney Memorial Hospital, Albany, Georgia  
1982 -1986 Emergency physician

Albany Activities 1982 - 1986: Medical Director Southwest Georgia Easter Seal Rehabilitation Center  
Board Member Dougherty County Cancer Society  
Vice President Albany Sertoma Club, and winner of the Sertoman Man of the Year Award  
Chairman of the United Way Professional Fund Raising Division Dougherty County  
Medical Advisor E.M.S. training program Albany Jr. College  
Instructor ACLS



Orthopaedic Residency: Greenville Hospital System, Greenville, South Carolina  
1986 – 1991 Internship and Residency in Orthopaedic Surgery  
Included 8 months of pediatric training at the Shriner's Hospital For Crippled Children

Orthopaedic Trauma Fellowship: Harbor view Medical Center, Seattle, Washington  
1991 – 1992 Orthopaedic Traumatology


Board Certification: National Board of Medical Examiners, 1981  
American Board of Orthopaedic Surgery, 1994  
Recertification: American Board of Orthopaedic Surgery, 2003

Medical License: Idaho M6040

Boise Idaho: Orthopaedic Associates 1992 - current

Hospital Affiliations: St. Alphonsus Regional Medical Center  
St. Lukes Regional Medical Center  
Treasure Valley Hospital  
Idaho Elk's Rehabilitation Hospital  
Orthopedic Surgery Center of Idaho

Professional Activities: Past President, Idaho Orthopaedic Society  
Past Vice President, North Pacific Orthopaedic Society  
Current Chairman, Department of Orthopaedic Surgery, St. Alphonsus Regional Medical Center  
Physician's Advisory Committee, St. Alphonsus Regional Medical Center  
Chairman, Operating Room Committee, St. Alphonsus Regional Medical Center  
Board of Directors, St. Alphonsus Regional Medical Center  
State Societies Committee, American Academy of Orthopaedic Surgeons  
Ada County Medical Society  
American Trauma Society

Family: Wife: Jody married 1981  


Hobbies: Spending time with my family, Snow Skiing, Golf, Exercising, Gardening, Fishing, and Camping,

***Exhibit B***

**01159**

Publications: Meier MC, Ferguson RL,  
Treatment of slipped capital femoral epiphysis with a spica cast  
JBJS Am 1992 Dec, 74(10); 1522- 9

Henley MB, Meier M, Tencer AF.  
Influences of some design parameters on the biomechanics of the  
unreamed tibial nail  
J. Orthop. Trauma 1993; 7(4):311-9Created on 12/23/2003 4:21  
PM

**Jack S. Gjording, ISB No. 1105**  
**Trudy Hanson Fouser, ISB No. 2794**  
**Bobbi K. Dominick, of Counsel, ISB No. 2895**  
**GJORDING & FOUSER, PLLC**  
509 W. Hays Street  
P.O. Box 2837  
Boise, Idaho 83701  
Telephone: (208)336-9777  
Facsimile: (208)336-9177

**Patrick J. Miller, ISB No. 3221**  
**GIVENS PURSLEY LLP**  
601 W. Bannock Street  
P.O. Box 2720  
Boise, ID 83701-2720  
Telephone: (208) 388-1200  
Facsimile: (208) 388-1300

Attorneys for Plaintiff/CounterDefendants

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

SAINT ALPHONSUS DIVERSIFIED  
CARE, INC., an Idaho nonprofit corporation,

Plaintiff,

vs.

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Defendant.

Case No. CV OC 0408219D

**SAINT ALPHONSUS'  
OBJECTION TO MRI  
ASSOCIATES' EXPERT  
WITNESS DISCLOSURES FOR  
CHARLES A. WILHOITE AND  
BRUCE P. BUDGE**

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 4:47

APR 26 2007

J. DAVID NAVARRO, Clerk  
By J BLACK  
DEPUTY

MRI ASSOCIATES, LLP, an Idaho limited liability partnership, on its own behalf, and on behalf of MRI Limited, an Idaho Limited Partnership, and MRI Mobile Limited, an Idaho Limited Partnership,

Counterclaimants,

vs.

SAINT ALPHONSUS DIVERSIFIED CARE, INC., an Idaho nonprofit corporation; SAINT ALPHONSUS REGIONAL MEDICAL CENTER,

Counterdefendants.

MRI ASSOCIATES, LLP, an Idaho limited liability partnership,

Third-Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING, LLC, an Idaho limited liability company; GEM STATE RADIOLOGY, LLP, an Idaho limited liability partnership; and IMAGING CENTER RADIOLOGISTS, LLP, an Idaho limited liability partnership,

Third-Party Defendants.

## I. INTRODUCTION

Saint Alphonsus Diversified Care, Inc. ("SADC") and Saint Alphonsus Regional Medical Center, Inc. ("SARMC"), hereby object to MRI Associates' ("MRIA") disclosure of experts Bruce P. Budge and Charles A. Wilhoite. MRIA's disclosure of these two experts was not in compliance with Idaho Rule of Civil Procedure 26(b)(4). Rule 26(b)(4) requires the expert witness disclosure to contain a "complete statement of all opinions to be expressed." By the

express terms of the expert witness reports, not all opinions are disclosed. Moreover, SADC and SARMC have been seeking to discover MRIA's alleged damages for more than 14 months. MRIA consistently stated in response to numerous efforts to obtain this information that its damage analysis would come from expert witnesses. MRIA was, therefore, obligated to respond with full and complete disclosure of its damage calculations when it disclosed its experts. For the reasons stated below, MRIA failed to do so. For these and other reasons, MRIA's expert witness disclosure fails to contain a "complete statement of all opinions to be expressed."

## **II. ARGUMENT**

### **A. Saint Alphonsus Makes Numerous Requests for MRIA to Produce Damage Information.**

On December 21, 2005, SADC and SARMC served a set of Interrogatories on MRIA that included the following Interrogatory No. 7:

**INTERROGATORY NO. 7:** Please identify with specificity every item and amount of damage you allege under Paragraphs 26, 27, 29 and 31 of your Answer to Complaint and Counterclaim.

On January 9, 2006, MRIA objected to this Interrogatory and stated that it had retained experts to assist in calculating damages and would supplement the answer when the information became available as follows:

**ANSWER TO INTERROGATORY NO. 7:** See General Objections. Defendant further objects to this Interrogatory on the ground that Defendant has not yet ascertained the precise amount of damages it has sustained due to the wrongful conduct of Plaintiff. Defendant has retained experts to assist it in calculating damages and will supplement this answer when the information becomes available. Without waiting and subject to these objections, Defendant, pursuant to Rule 33(c) of the Idaho Rules of Civil Procedure, refers Plaintiff to all financial records of Defendant, Plaintiff, IMI and GSR produced in this litigation.

(See Affidavit of Jack S. Gjording ("Gjording Aff."), Exh. A.) (Emphasis added.)

In response to counsel's letter to MRIA's counsel seeking an adequate disclosure to Interrogatory No. 7 (*see* Gjording Aff., Exh. B), MRIA served a supplemental answer to Interrogatory No. 7 on May 10, 2006. MRIA's response did not provide any substantive information concerning its damages. MRIA stated that it would be entitled to "economic losses such as lost profit, diminution in value and injured business reputation" but did not provide any disclosure of actual lost business, actual injuries to business reputation, or any other substantive evidence of damage. (*See* Gjording Aff., Exh. C.)

On July 31, 2006, SADC and SARMC took the deposition of Jack Floyd, the CEO of MRI Limited, dba MRI Center of Idaho ("MRICI"). In that deposition, Mr. Floyd was asked what damage MRICI or MRIA had suffered. Mr. Floyd stated that, "there are experts in the area that, this is what they do, and I would certainly defer to their judgment." (*See* Deposition of Jack Floyd ("Floyd Depo") at p. 44 ll. 11-15 (*see* Gjording Aff., Exh. D).) More specifically, Mr. Floyd was asked the following questions and provided the following answers in his deposition:

Q. MRI Associates has alleged that it has been damaged in this case as a result of a number of things. They've alleged that Saint Alphonsus breached the partnership agreement by leaving the partnership; they've also alleged breaches of fiduciary duty and other activities, both by the Saint Alphonsus entities and the Intermountain Medical Imaging and Gem State entities.

Do you have, based upon all the – we've talked about a lot of financial experience you have here. Do you have an understanding in your own mind of the damage that MRI Associates has suffered as a result of the activities alleged in the Counterclaim which you've read?

A. **My role is operations, and I've really not dabbled into the ins and outs of the damages. So it would be**

**speculative on my part to tell you what the damage values are.**

Q. You have not made an assessment of the damages?

A. I have not made a comprehensive assessment of the damages.

Q. I understand a comprehensive assessment, but have you identified areas of damage or have you calculated potential damages to MRI Associates in this matter?

A. I need that rephrased, because the situation I'm in is that over time I've gone to people, like Ken Fry, to ask for relief. Those times could be considered – you know, these are how it's hurting us.

And so it's a very difficult question for me to ask, because for five years, you know, I've been talking with Ken and others. So that's why I have to be careful to say comprehensive or point in time.

Q. So you have not attempted to, for example, calculate the amount of damage that MRI Associates has suffered by reason of the fact that Saint Alphonsus withdrew from the partnership?

A. That is correct.

Q. Based upon your long history with GE and the experience you've testified to, do you think you would be capable, if asked, of estimating damages that MRI Center has incurred as a result of – or MRI Associates has suffered as a result of Saint Alphonsus's leaving the partnership?

A. **I think the nature of the claim is complex enough that I would be foolhardy to even begin to attempt it. And there are experts in the area that, this is what they do, and I would certainly defer to their judgment.**

Floyd Depo, p. 42 l. 12 – p. 44 l. 15 (emphasis added).

On November 17, 2006, counsel for SADC and SARMC send another letter to MRIA to supplements its damages response (Gjording Aff., Exh. E). MRIA again stated it would not be



able to provide the amount of its claimed damages. (See Gjording Aff., Exh. F, p. 3, fourth bullet.)

In addition to Saint Alphonsus' efforts to obtain discovery of MRIA's damages, Third Party Defendant Intermountain Medical Imaging ("IMI") served the following Interrogatory on MRI Associates, which resulted in the following responses:

**INTERROGATORY NO. 3:** Please specify the damages you are claiming for each cause of action alleged in your Counterclaim or third party action and all facts/documents/witnesses that will support your claim.

**ANSWER:** In addition to the general objections above, Defendant objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Without waiving the foregoing objections, this information will be provided by Defendant's experts pursuant to the Idaho Rules of Civil Procedure, any stipulations of the parties and the scheduling order entered by the Court.

**SUPPLEMENTAL ANSWER:** MRIA is currently in the process of working with its experts to determine the amount of damages recoverable from IMI/GSR/ICR. MRIA contends that such damages include, but are not limited to, MRICI's lost profits attributable to the diversion of patients away from MRICI to IMI Downtown and IMI West. Further, since IMI/GSR/ICR supported and assisted in the wrongful dissociation of SARMC from MRIA, IMI/GSR/ICR is liable for the damages connected with that wrongful dissociation. MRIA reserves the right to further supplement its response to this Interrogatory as necessary.

(MRIA's First Supplemental Responses to Intermountain Medical Imaging, LLC's First Set of Interrogatories, Gjording Aff., Exh. G.) (Emphasis added.)

The original last day for MRIA to disclose expert witnesses was March 27, 2006. That date was subsequently extended several times. On March 20, 2006, MRIA's expert witness disclosure deadline was changed to September 18, 2006. On November 22, 2006, MRIA's expert witness disclosure deadline was extended to February 19, 2007. Pursuant to a stipulation

of the parties, MRIA's expert witness disclosure deadline was subsequently extended to March 12, 2007. Pursuant to further stipulation of the parties, MRIA's expert witness disclosure deadline for its antitrust experts was extended to March 19, 2007.

In light of the fact that MRIA had deferred all discovery responses regarding damages to its experts, SARMC and SADC wanted to make doubly sure that the expert witness disclosures would be complete. Therefore, notwithstanding this Court's Scheduling Order which stated that all expert witness disclosures had to be in compliance with I.R.C.P. Rule 26(b)(4)(A)(i), Saint Alphonsus served an additional interrogatory on MRIA asking for disclosure of all the information required by that Rule. (*See Gjording Aff., Exh. H.*)

**B. MRIA Fails to Disclose All Opinions Regarding Its Damages.**

On March 12, 2007, MRI Associates disclosed Bruce P. Budge as an expert witness. (*See Gjording Aff., Exh. I.*) At page 5 of his opinion, he states as follows:

For purposes of my analysis, I have assumed that the counterdefendants and third party defendants are found liable for the allegations made by MRIA. To the extent all or some of the allegations are dismissed, my damage calculations may be revised. I may present schedules showing other damage scenarios at trial, but these scenarios will be based on the schedules to this report and any new damage I may receive. (Emphasis added.)

This disclosure is plainly inconsistent with the requirements of Rule 26(b)(4)(A)(i). The Rule requires disclosure of a complete statement of all opinions to be expressed. It requires disclosure of any exhibits to be used as a summary of or support for opinions. By its own terms, MRIA's expert disclosure of Mr. Budge fails to state all opinions he may give.

Moreover, SADC, SARMC and IMI plainly requested the disclosure of MRIA's alleged damages by claim. MRIA said its expert disclosures would respond to these requests. MRIA's failure to disclose opinions by claims, violates Rule 26(b)(4)(A)(i).

Likewise, in the expert witness report of Charles A. Wilhoite (*see* Gjording Aff., Exh. F), he states:

Based on consideration of the July 24, 2006, ruling, and assuming the remaining allegations presented by MRIA are proven, I have estimated the economic damages incurred by MRIA based on the premises that the Acts resulted in (1) the loss of historical relationships and (2) the diversion of future business opportunities with regard to the operations of MRIA.

(*See* Wilhoite Report at p. 2 (Gjording Aff., Exh. I.)) (Emphasis added.)

The “Acts” to which Mr. Wilhoite refers are “(1) unfair business practices, (2) business interference, (3) violation of non-compete agreement, and (4) wrongful dissociation.” *Id.* Therefore, Mr. Wilhoite assumes for purposes of his analysis that MRIA prevails on all of its claims. Mr. Wilhoite’s opinion, likewise, fails to disclose all opinions that MRIA represented it would.

**C. Saint Alphonsus is Prejudiced By the Failure to Disclose All Opinions.**

SADC and SARMC need to know damages by claim in order to allow them to respond both legally and factually to the damage allegations. The remedies to which MRIA, MRI Limited and MRI Mobile would be legally entitled differs based upon the cause of action stated. SADC and SARMC were, therefore, entitled to know, by claim, the damages asserted to determine whether MRIA has claimed damages that are legally cognizable. As the Court knows, in addition, SADC and SARMC were entitled to know MRIA’s damages by claim in order to be factually prepared to respond to such claims. A claim for recovery of lost profits must demonstrate that the alleged lost profits are capable of measurement based upon known reliable factors without undue speculation. *Ashland Mgmt. Inc. v. Janien*, 82 N.Y.2d 395, 403 (1993).

On March 16, 2007, counsel made their objections known to MRIA's counsel (Gjording Aff., Exh. K). In a meet and confer conference on March 19, 2006, counsel for MRIA stated that MRIA would not break down its damages by claim (Gjording Aff., Exh. L, ¶ 3).

**D. Court Should Strike Opinions.**

By refusing to answer SADC, SARMC and IMI's discovery requests, but instead deferring to its experts as the sole evidence of damages, MRIA became obligated to make full disclosure in its expert witness reports of all damages by claim. MRIA failed to do so after repeated requests to do so.

A trial court has authority to sanction parties for non-compliance with pretrial orders, and sanctions may include those enumerated in I.R.C.P. 37(b)(2)(B), (C) and (D) for discovery violations. I.R.C.P. 16(i). The imposition of such sanctions is committed to the discretion of the trial court, and we will not overturn such a decision absent a manifest abuse of that discretion. *S. Idaho Prod. Credit Ass'n v. Astorquia*, 113 Idaho 526, 528 746 P.2d 985, 987 (1987); *Edmunds v. St. Alphonsus Regional Medical Center*, 2006 Idaho 30862 (May 3, 2006). In this case, in light of the inadequate disclosures, SADC and SARMC's numerous requests and the current late date and consequent prejudice to SADC and SARMC, the proper sanctions for failing to comply with the expert witness disclosure requirements is the striking of those reports.

**III. CONCLUSION**

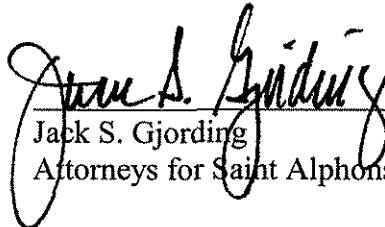
I.R.C.P. Rule 26(b)(4)(A)(i) requires the disclosure of a complete statement of all opinions to be expressed as well as any exhibits to be used as a summary of or support for opinions. MRIA deferred all of its damage analysis to its experts, i.e., Mr. Budge and Mr. Wilhoite. Mr. Budge and Mr. Wilhoite, however, do not provide a complete statement of all

opinions that MRIA has said will be provided. Budge and Wilhoite have not disclosed their opinions by claim.

MRIA cannot claim surprise at this late date. SADC and SARMC have repeatedly asked for MRIA's claimed damages by claim. MRIA has failed to provide that information. MRIA suggests, however, that information will be forthcoming if it is determined that they are not successful on one or more of their 20 claims. This, therefore, suggests that other opinions may exist or may be developed in the future which have not been disclosed. The time for disclosing all such opinions has passed. Because the expert witness disclosures do not contain the disclosure of all such opinions, they must be stricken.

DATED this 26<sup>th</sup> day of April 2007.

GJORDING & FOUSER, PLLC

  
\_\_\_\_\_  
Jack S. Gjording  
Attorneys for Saint Alphonsus

## CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of April 2007, a true and correct copy of the

foregoing was served upon the following individual(s) by the means indicated:

Thomas A. Banducci  
GREENER BANDUCCI SHOEMAKER P.A.  
950 West Bannock, Suite 900  
Boise, ID 83702  
Facsimile (208) 319-2601

☒ U.S. mail, postage prepaid  
☐ express mail  
☐ hand delivery  
☐ facsimile

Warren E. Jones  
Joseph H. Uberuaga  
EBERLE BERLIN KADING TURNBOW  
McKLVEEN & JONES  
300 N. 6<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Boise, ID 83702  
Facsimile (208) 344-8542

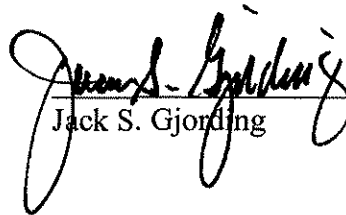
☒ U.S. mail, postage prepaid  
☐ express mail  
☐ hand delivery  
☐ facsimile

Rodney R. Saetrum  
SAETRUM LAW OFFICES  
101 S. Capitol Boulevard, Suite 1800  
Boise, ID 83702  
Facsimile (208) 336-0448

☒ U.S. mail, postage prepaid  
☐ express mail  
☐ hand delivery  
☐ facsimile

Patrick J. Miller  
GIVENS PURSLEY LLP  
601 West Bannock Street  
P.O. Box 2720  
Boise, ID 83701  
Facsimile (208) 388-1300

☒ U.S. mail, postage prepaid  
☐ express mail  
☐ hand delivery  
☐ facsimile

  
\_\_\_\_\_  
Jack S. Gjording

APR 26 2007

J. DAVID NAVARRO, Clerk  
By ABBY T. \_\_\_\_\_  
DEPUTY

Warren E. Jones, ISB No. 1193  
Neil D. McFeeley, ISB No. 3564  
EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD  
300 North Sixth Street  
Post Office Box 1368  
Boise, Idaho 83701  
Telephone: (208) 344-8535  
Facsimile: (208) 344-8542

Attorneys for INTERMOUNTAIN MEDICAL IMAGING, LLC,  
GEM STATE RADIOLOGY, LLP, and  
IMAGING CENTER RADIOLOGISTS, LLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation, )

Plaintiff, )

vs. )

MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )

Defendant. )

\_\_\_\_\_  
MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )

Counterclaimant, )

vs. )

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation; SAINT )  
ALPHONSUS REGIONAL MEDICAL )  
CENTER, )

Counterdefendants. )  
\_\_\_\_\_ )

Case No. CV OC 0408219D

**THIRD PARTY DEFENDANTS'  
MOTION TO EXCLUDE  
EXPERT WITNESSES**

THIRD PARTY DEFENDANTS' MOTION TO EXCLUDE EXPERT WITNESSES

PAGE - 1

00147515.000.DOC

01172

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Third Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING,  
LLC, an Idaho limited liability company;  
GEM STATE RADIOLOGY, LLP, an Idaho  
limited liability partnership; and IMAGING  
CENTER RADIOLOGISTS, LLP, an Idaho  
limited liability partnership,

Third Party Defendants.

**COME NOW** the Third-Party Defendants, Intermountain Medical Imaging, LLC, Gem State Radiology, LLP, and Imaging Center Radiologists, LLP, by and through their attorneys of record, Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chtd., and submit this Motion to Exclude Expert Witnesses Bruce P. Budge and Charles Wilhoite. The basis for this motion is that their opinions are speculative, do not comply with the Idaho Rule on expert disclosures, and would not only not be helpful to the jury but would confuse the jury to the prejudice of Third Party Defendants.

### **I. FACTUAL BACKGROUND**

After receiving innumerable discovery requests seeking information on its damages claims, MRIA finally disclosed its damages experts: Bruce P. Budge and Charles Wilhoite. A copy of those expert disclosures is attached hereto for the convenience of the Court.

Both witnesses were designated as expert witnesses on damages. Mr. Budge assessed damages that had allegedly occurred through 2006 and Mr. Wilhoite provided an analysis of future



damages.

As the Court will note when it reviews the expert disclosures, the two reports have much in common. Both of them rely on pure speculation. Their conclusions are based on an assumption that MRI Center would have retained every scan that went to IMI. Their conclusions ignore the reality that other competitors for the MRI business exist. Their conclusions are based on an assumption that all of the wrongful acts by Third Party Defendants and Saint Alphonsus alleged in MRIA's complaint actually occurred. For example, on page 5 of Mr. Budge's report he states that for purposes of his analysis, "I have assumed that the Counter-Defendants and Third Party Defendants are found liable for the allegations made by MRIA."

What is most important, however, is not just the speculative nature of the expert opinions but the fact that the reports do not even attempt to break out damages for any cause of action or even distinguish between Saint Alphonsus and the Third Party Defendants. For example, the expert reports are unable to distinguish or separate damages arising from the alleged "libel" by GSR in 2005 from the alleged "conversion" by Saint Alphonsus. They do not distinguish the damages arising from Third Party Defendants' alleged interference with existing contractual relationship from the damages arising from the alleged interference with prospective contractual relationship. That is, if Third Party Defendants were found liable on every single allegation, they would be faced with \$52 million in damages according to the expert reports. But if Third Party Defendants are exonerated on every cause of action alleged by MRIA except one, they would still be liable for the same \$52 million damages on that single claim. This inability or failure to separate damages allegedly caused by each claim is particularly egregious in light of Third Party Defendants' specific discovery requests seeking to discover what damages MRIA claimed arose from the various alleged actions by Third Party Defendants.

Mr. Budge states “to the extent all or some of the allegations are dismissed, my damage calculations may be revised.” One would hope when all of the allegations are dismissed, there would be no need for “revising” his speculative damages calculations. The point is, however, that the time for MRIA’s experts’ opinions to be disclosed has passed and Mr. Budge cannot “revise” any damage calculations. Thus MRIA is faced with the fact that Mr. Budge did not break down the damages based on specific allegations and thus his report is deficient.

Mr. Budge also “assumes” certain facts which the Court has already found not to be true. For example on page 7 he assumed that GSR had the obligation to read all MRI scans performed at MRI Center “under exclusive contract with SARMC.” The Court has already held that GSR had no obligation to read outpatient scans at the MRI Center. Budge also does not understand that Saint Alphonsus was not involved in the MRI portion of IMI for several years after the operating agreement was signed.

Similarly, Mr. Wilhoite’s report has these same inadequacies. First of all, he relies on the Budge report so all his conclusions are flawed as well. His conclusions are speculative because they make the same assumptions. Again, he does not break down any damages by each cause of action, nor does he even separate Third Party Defendants from Saint Alphonsus for purposes of damage calculations.

## **II. LEGAL AGRUMENT**

Whether a witness is sufficiently qualified as an expert is a matter largely within the discretion of the trial court. *State v. Hopkins*, 113 Idaho 679, 747 P.2d 88 (Ct. App. 1987).

The Court’s Fifth Amended Scheduling Order requires specifically that the expert disclosure “shall be in compliance with Rule 26(b)(4)(A)(i).” That provision requires “a complete statement of all opinions to be expressed and the bases and reasons therefore ....” The experts’

reports do not comply with that Rule.

Neither do they comply with Idaho Rule of Evidence 702 regarding testimony by experts. Expert testimony is only admissible under this Rule when the expert's specialized knowledge will assist the trier of fact to understand the evidence and determine a fact in question. *State v. Dragoman*, 130 Idaho 537, 542, 944 P.2d 134, 137 (Ct. App. 1997). "The information, theory or methodology upon which the expert's opinion is based need not be commonly agreed upon by experts in the field, but it must have sufficient indicia of reliability to meet IRE 702 requirements." *State v. Konechny*, 134 Idaho 410, 417, 3 P.3d 535, 542 (Ct. App. 2000).

Idaho has not specifically adopted *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 590 U.S. 579 (1993). See *Swallow v. Emergency Medicine of Idaho P.A.*, 138 Idaho 589, 67 P.3d 68 (2003). Nevertheless, the Idaho Supreme Court has held that if the reasoning or methodology underlying an expert opinion is not scientifically sound, then the opinion will not assist the trier of fact to understand the evidence. The Court stated in *Swallow* as follows:

To be admissible, the expert's testimony must assist the trier of fact to understand the evidence or to determine a fact in issue. An expert opinion that is speculative or unsubstantiated by facts in the record is inadmissible because it would not assist the trier of fact to understand the evidence or determine a fact that is at issue.

*Id.* at 592, 67 P3d at 71.

Whether a proposed expert's testimony is judged under *Daubert* or *Swallow*, the fact is that the district court must make the threshold determination whether the report or testimony is sufficiently reliable to assist the jury in its fact finding function. In the present case, the Budge and Wilhoite reports and proposed testimony have no indicia of reliability. The reports and testimony are based upon assumptions that are clearly speculative and not even supported by common sense; e.g., that

MRIC would have received *all* scans performed by IMI at its Meridian location. Likewise, the assumption by Budge and Wilhoite that there would have been no competition for MRI scans entering the Treasure Valley between 1999 and 2023 defies common sense. These and other assumptions made by Budge and Wilhoite go more than simply to the weight of the Budge and Wilhoite opinions. The opinions proffered by Budge and Wilhoite provide absolutely no guidance to the jury as to what the damages might be under any set of circumstances other than the unsupported and outrageous assumptions of Budge and Wilhoite upon which they are based. They do not assist the jury to understand damage claims because they do not even separate Third Party Defendants from Saint Alphonsus. Both Third Party Defendants and Saint Alphonsus are prejudiced by this analysis. The reports do not allocate damages to any particular cause of action or claimed wrongful act. They not only do not assist the jury to determine a fact in question, they confuse the matter and prejudice the Defendants. Perhaps most importantly, the expert opinions' failure to break out claimed damages for each cause of action violates clear Idaho law requiring proof of each element of a claim. The case law and the Idaho Jury Instructions require a plaintiff to prove each element of a claim, including the amount of damages proximately caused by the violation. For example, the elements of interference with contractual relationship include the existence of a contract, knowledge of the contract, intentional interference causing a breach, and the nature and extent of damage, and the amount thereof. IDJI 4.70. In order to prove a claim of breach of contract, the plaintiff must prove not only that it has been damaged, but the amount of the damages. IDJI 6.10.1.

No "lump sum" estimation of damages is permissible under Idaho law. Thus the opinions of Messrs. Budge and Wilhoite are not helpful to the jury or even relevant to the lawsuit and must be excluded.

### III. CONCLUSION

Third Party Defendants request the Court to exclude the testimony, report and opinions of Mr. Budge and Mr. Wilhoite.

DATED this 26 day of April, 2007.

EBERLE, BERLIN, KADING, TURNBOW ,  
MCKLVEEN & JONES, CHTD

By: Warren E. Jones  
WARREN E. JONES

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26 day of April, 2007, I caused to be served a true and correct copy of the foregoing document upon the following individual(s)/entity(ies), by the method indicated, and addressed as follows:

Thomas A. Banducci  
Greener, Banducci, Shoemaker, PA  
950 W. Bannock, Suite 900  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 319-2601

Jack S. Gjording  
Gjording & Fouser, PLLC  
509 West Hays Street  
Post Office Box 2837  
Boise, Idaho 83701

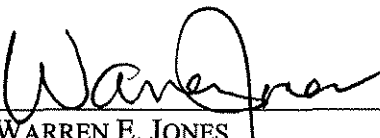
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 336-9177

Patrick J. Miller  
Givens Pursley, LLP  
601 West Bannock Street  
Post Office Box 2720  
Boise, Idaho 83701-2720

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 388-1300

David W. Lloyd  
Saetrum Law Offices  
101 South Capitol Boulevard, Suite 1800  
Post Office Box 7425  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 336-0448

  
\_\_\_\_\_  
WARREN E. JONES

Warren E. Jones, ISB No. 1193  
Neil D. McFeeley, ISB No. 3564  
EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD  
300 North Sixth Street  
Post Office Box 1368  
Boise, Idaho 83701  
Telephone: (208) 344-8535  
Facsimile: (208) 344-8542

NO. \_\_\_\_\_  
FILED 337  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

APR 26 2007

J. DAVID NAVARRO, Clerk  
BY ALCOY TERA  
DEPUTY

Attorneys for INTERMOUNTAIN MEDICAL IMAGING, LLC,  
GEM STATE RADIOLOGY, LLP, and  
IMAGING CENTER RADIOLOGISTS, LLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation, )

Plaintiff, )

vs. )

MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )

Defendant. )

Case No. CV OC 0408219D

THIRD PARTY DEFENDANTS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON  
DEFAMATION CAUSE OF ACTION

MRI ASSOCIATES, LLP, an Idaho limited )  
liability partnership, )

Counterclaimant, )

vs. )

SAINT ALPHONSUS DIVERSIFIED CARE, )  
INC., an Idaho nonprofit corporation; SAINT )  
ALPHONSUS REGIONAL MEDICAL )  
CENTER, )

Counterdefendants. )

THIRD PARTY DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEFAMATION CAUSE OF ACTION

PAGE - 1

00146895.000

01180

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Third Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING,  
LLC, an Idaho limited liability company;  
GEM STATE RADIOLOGY, LLP, an Idaho  
limited liability partnership; and IMAGING  
CENTER RADIOLOGISTS, LLP, an Idaho  
limited liability partnership,

Third Party Defendants.

COME NOW the Third-Party Defendants, Intermountain Medical Imaging, LLC, Gem State Radiology, LLP, and Imaging Center Radiologists, LLP, by and through their attorneys of record, Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chtd., and move this Court for partial summary judgment on MRIA's defamation cause of action and seeking dismissal of MRIA's Thirteenth Cause of Action for alleged defamation by Gem State Radiology, LLP ("GSR") of MRIA. GSR submits that there is no fault on the part of GSR. Moreover, the alleged defamatory statement is protected by the qualified privileges of common interest and protection of third persons and MRI Center can prove no damages arose from the alleged defamatory statements.

DATED this 26 day of April, 2007.

EBERLE, BERLIN, KADING, TURNBOW,  
MCKLVEEN & JONES, CHTD

By: Neil D. McFeeley  
NEIL D. MCFEELEY  
Attorneys for Third-Party Defendants



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26 day of April, 2007, I caused to be served a true and correct copy of the foregoing document upon the following individual(s)/entity(ies), by the method indicated, and addressed as follows:

Thomas A. Banducci  
Greener, Banducci, Shoemaker, PA  
950 W. Bannock, Suite 900  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 319-2601

Jack S. Gjording  
Gjording & Fouser, PLLC  
509 West Hays Street  
Post Office Box 2837  
Boise, Idaho 83701

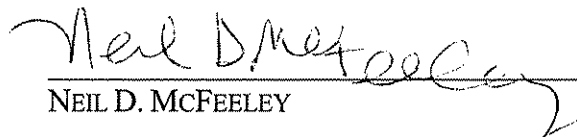
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 336-9177

Patrick J. Miller  
Givens Pursley, LLP  
601 West Bannock Street  
Post Office Box 2720  
Boise, Idaho 83701-2720

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 388-1300

David W. Lloyd  
Saetrum Law Offices  
101 South Capitol Boulevard, Suite 1800  
Post Office Box 7425  
Boise, Idaho 83702

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile to (208) 336-0448

  
NEIL D. MCFEELEY

ORIGINAL

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED PM 4:55

MAY 01 2007

J. DAVID NAVARRO, Clerk  
By J. EARLE  
DEPUTY

Thomas A. Banducci (ISB No. 2453)

*tbanducci@greenerlaw.com*

G. Rey Reinhardt, IV (ISB No. 6209)

*greinhardt@greenerlaw.com*

Daniel J. Gordon (ISB No. 6051)

*dgordon@greenerlaw.com*

GREENER BANDUCCI SHOEMAKER P.A.

950 W. Bannock Street, Suite 900

Boise, ID 83702

Telephone: (208) 319-2600

Facsimile: (208) 319-2601

Attorneys for Defendants/Counterclaimants/Third

Party Plaintiff MRI Associates, LLP

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SAINT ALPHONSUS DIVERSIFIED CARE, INC.,  
an Idaho nonprofit corporation,

Plaintiff,

v.

MRI ASSOCIATES, LLP, an Idaho limited liability  
partnership,

Defendant.

MRI ASSOCIATES, LLP, an Idaho limited liability  
partnership, on its own behalf, and on behalf of MRI  
Limited, an Idaho Limited Partnership, and MRI  
Mobile Limited, an Idaho Limited Partnership,

CounterClaimants,

v.

SAINT ALPHONSUS DIVERSIFIED CARE, INC.,  
an Idaho nonprofit corporation; SAINT  
ALPHONSUS REGIONAL MEDICAL CENTER,

CounterDefendants.

Case No. CV OC 0408219D

**MRIA'S OPPOSITION TO SARMC'S  
MOTION IN LIMINE RE: MR.  
DOUGLAS M. BRANSON**

---

MRI ASSOCIATES, LLP, an Idaho limited liability partnership,

Third-Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING, LLC, an Idaho limited liability company; GEM STATE RADIOLOGY, LLP, an Idaho limited liability partnership; and IMAGING CENTER RADIOLOGISTS, LLP, an Idaho limited liability partnership,

Third-Party Defendants.

---

MRI Associates, LLP (“MRIA”), by and through its counsel of record, Greener Banducci Shoemaker P.A., hereby opposes SARMC’s motion in limine regarding the testimony of Douglas M. Branson.

### **I. INTRODUCTION**

It is extremely unlikely that the jury in this case will be composed entirely of sophisticated businesspeople, attorneys, and judges. Thus, MRIA must be permitted to make the complex factual circumstances of this case—the partnerships involved and the norms that define the conduct of partnerships and their individual members—comprehensible to the jury.

By seeking to present the testimony of Mr. Branson, MRIA does not intend to instruct the jury on the law of the case. On the contrary, MRIA only seeks to help the jury understand factual background that is both complicated and fundamental to its case. Furthermore, Mr. Branson’s testimony will not invade the province of this Court or the jury, and the probative value of Mr. Branson’s testimony will far outweigh any risk of unfair prejudice, confusion, delay, or waste. In this light, SARMC’s motion in limine seems rather cynical: apparently SARMC realizes that the

less the jury understands about partnerships and the conduct they require, the better SARMC will fare. The Court should reject SARMC's motion in limine.

## **II. DISCUSSION**

SARMC's motion in limine attempts to parlay a narrow ruling issued in an entirely different context into a sweeping evidentiary victory. Of course, when MRIA petitioned this court for leave to amend to assert punitive damages claims, this Court weighed facts. *See* Idaho Code § 6-1604(2) ("The court shall allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that ....") However, a jury will weigh the facts at trial. And what will be helpful to that jury must guide the analysis of the admissibility of Mr. Branson's testimony.

### **A. Expert Testimony: Admissibility Standards**

The Idaho Rules of Evidence provide: "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." *Id.* at 702. "Whether the situation is a proper one for the use of expert testimony is to be determined on the basis of assisting the trier. ... When opinions are excluded, it is because they are unhelpful and therefore superfluous and a waste of time." F.R.E. 702, Advisory Committee Notes. "The determination of what will be of assistance to the trier of fact lies within the broad discretion of the trial court." *Sliman v. Aluminum Co. of America*, 112 Idaho 277, 285, 731 P.2d 1267, 1275 (1986).

"Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." I.R.E. 704.

The rule that “experts may not offer opinions on matters of ultimate fact” is an “archaic notion” that “is not the law of Idaho.” *Sliman*, 112 Idaho at 285, 731 P.2d at 1275. “In Idaho, experts may testify to ultimate issues or facts so long as their testimony assists the trier of fact.” *Id.*

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” I.R.E. 403. “Balancing of probative value against prejudice and the ultimate decision to admit or exclude the evidence is within the trial court's sound discretion.” *State v. Hairston*, 133 Idaho 496, 502, 988 P.2d 1170, 1176 (1999).

As the following discussion indicates, Mr. Branson’s testimony (1) will assist the trier of fact, (2) will not invade the province of the Judge or jury, and (3) will provide probative value to the trial that far outweighs any risk of unfair prejudice, confusion, delay, or waste.

**B. Douglas Branson’s Testimony Will “Assist the Trier of Fact”—and Will Not Invade the Province of the Judge or Jury**

It is obviously true that “purely legal questions and instructions to the jury on the law” are the exclusive domain of the judge. *Nieves-Villanueva v. Soto-Rivera*, 133 F.3d 92, 99 (1st Cir. 1997). Likewise, attempts to create the appearance that an expert witness “knows more than the judge” would obviously be improper. *See id.* However, by presenting the testimony of Mr. Branson, MRJA does not seek to define purely legal issues, instruct the jury on the law, or initiate any sort of improper competition with the Court. Much to the contrary, MRJA merely seeks to present evidence that will help the jury understand the business circumstances from which its claims arise.

“[B]eing a lawyer does not disqualify one as an expert witness. Lawyers may testify as to legal matters when those matters involve questions of fact.” *Askanase v. Fatjo*, 130 F.3d 657, 672 (5th Cir. 1997). In a case arising from complicated business circumstances, the “expert testimony [of a lawyer or law professor] may help a jury understand unfamiliar terms and concepts.” *U.S. v. Bilzerian*, 926 F.2d 1285, 1294 (2nd Cir. 1991). Likewise, a lawyer or law professor qualified as an expert may provide “general background” regarding complicated legal subjects. *See id.* (ruling that a law professor’s testimony, which consisted of “general background on federal securities regulation and the filing requirements of Schedule 13D” was not improper.)

“[T]he line between an inadmissible legal conclusion and admissible assistance to the trier of fact in understanding the evidence or in determining a fact in issue is not always bright.” *Burkhart v. Washington Metropolitan Area Transit Authority*, 112 F.3d 1207, 1212 (D.C. Cir. 1997) However, in this case—contrary to SARMC’s sweeping assertions—Mr. Branson’s testimony will help the jury.

Despite the present motion in limine, SARMC seems to acknowledge that attorney/expert testimony can be helpful to the trier of fact under I.R.E. 702. SARMC has designated its own witness to discuss the relevant business entities and the related norms. SARMC intends to call Richard O. Schmidt, Jr., J.D., LL.M. (*See* SARMC’s Third Supplemental Answer to MRIA’s First Set of Interrogatories at 3.) According to SARMC, Mr. Schmidt intends to testify that SARMC “acted in a reasonable and prudent manner under the circumstances; objectively fair and objectively in good faith in performing its obligations as a partner in [MRIA] with reference to the circumstances described in the Second Amended Counterclaim, Cross Claim and the answers thereto.” (*Id.*) Mr. Schmidt also intends to respond directly to the testimony of Mr.

Branson. (*Id.* at 7.) Both Mr. Branson and Mr. Schmidt may help the jury understand the facts underlying the parties' claims and defenses.<sup>1</sup>

Idaho courts have permitted experts to testify regarding regulations and industry standards in a manner that was helpful to the jury. *Walston v. Monumental Life Ins. Co.*, 129 Idaho 211, 923 P.2d 456 (1996), ruled that an insurance industry expert could properly testify regarding Idaho law, specifically, "Idaho insurance department advertising regulations." *Id.* at 216, 461. *Walston* ruled: "[t]he testimony was presented to show insurance industry standards and was properly admitted for that purpose." *Id.* As in *Walston*, Mr. Branson will help the jury understand "industry standards" applicable to partnerships. *See id.*

Furthermore, *State v. Vondenkamp*, 141 Idaho 878, 119 P.3d 653 (Idaho App. 2005), indicates that expert testimony from an attorney regarding fiduciary duties may be admissible. The defendant in *Vondenkamp* claimed "that the district court erred by allowing [an attorney] to testify to opinions concerning ... [fiduciary] duties owed under a power of attorney" and that the expert/attorney's "testimony consisted of inadmissible legal opinions and that the law on these matters should have been submitted to the jury through instructions." *Id.* at 884, 659. *Vondenkamp* rejected this claim on the basis that the defendant did not specifically invoke I.R.E. 702 when it objected to the expert's testimony. *Id.* at 885, 660. However, it is revealing that *Vondenkamp* also disagreed with the defendant's characterization of the testimony as "inadmissible legal opinions." *Id.* Instead, *Vondenkamp* pointed out that the attorney/expert's

---

<sup>1</sup> The specific meaning of concepts like "duty of loyalty" and "duty of care" in the context of a partnership is far from obvious. Statutes addressing the subject involve considerable nuance. *See, e.g.*, Idaho Code § 53-2-408. And the Idaho Model Jury Instructions do not even contain an instruction on fiduciary duties. Of course, Mr. Branson and Mr. Schmidt will not instruct the jury on the law. However, it is clear that they may be able to help average jurors understand the evidence related to these concepts.

“testimony was more akin to a general overview and/or explanation of the areas of fiduciary responsibilities owed under a power of attorney ... than it was a legal opinion on discrete questions of law or ultimate issues before the jury.” *Id.* at 885, 660 n.3. *Vondenkamp*’s description of the attorney/expert testimony admitted in that case may also aptly describe a substantial portion of Mr. Branson’s testimony: a “general overview and/or explanation of the areas of fiduciary responsibilities ...” 141 Idaho at 885, 119 P.3d at 660 n.3.

Courts in other jurisdictions have also permitted lawyers or law professors to present expert testimony regarding legal subjects. The court in *U.S. v. Naegele*, 471 F.Supp.2d 152, 161-62 (D.D.C. 2007), permitted an attorney/expert to testify that “a lawyer stands as a fiduciary to his client and has a duty to provide competent and diligent representation.” *Id.* at 167. *Naegele* concluded that if offered in response to a particular defense at trial, the proposed testimony “would be reliable and helpful to the jury.” *Naegele* also permitted attorneys to testify regarding bankruptcy law and practice. *Id.* at 160-64. Although the court “intend[ed] to carefully circumscribe the testimony” of these attorney/experts, “the Court believe[d] that each of them [was] qualified to testify as an expert on these matters and that their testimony would be helpful to the jury.” *Id.* at 161-62. *Naegele* provides another example of an attorney/expert permitted to testify regarding fiduciary duties. *Id.* at 167. Mr. Branson would also testify regarding fiduciary duties, but only to the extent that such testimony helps the jury understand other facts admitted into evidence.

Next, *Pinal Creek Group v. Newmont Mining Corp.*, 352 F.Supp.2d 1037 (D.Ariz. 2005), decided to admit the testimony of two law professors regarding corporate norms and the relationships between different business entities. *Id.* at 1045-46. *Pinal Creek* prohibited the law



professors from taking the stand to “state the law,” which *Pinal Creek* called “solely the province of the trial judge.” *Id.* at 1045. However, *Pinal Creek* permitted the law professors to testify regarding “corporate norms,” the relationship between two business entities, and “the ways in which that relationship diverged from the corporate norms.” *Id.*

Along the same lines, *Waco Intern., Inc. v. KHK Scaffolding Houston Inc.*, 278 F.3d 523 (5th Cir. 2002), involved claims related to an *ex parte* seizure order in trademark litigation. An attorney/expert testified regarding “issues an attorney typically investigates in determining whether to pursue an *ex parte* seizure order.” *Id.* at 533. The opposing party moved to strike this testimony. The trial court denied the motion. It ruled that “in order for the jury to understand the standard of care as applies to a trademark owner's conduct in seeking a seizure, the expert has to explain what the law is, because the standard of care is defined in part by the law.”<sup>2</sup> *Id.* Furthermore, the district court “clearly specified the purpose of [the attorney’s] testimony, and properly indicated that the testimony as to legal issues was allowed because this standard necessarily involves what a reasonable lawyer needs to investigate and determine before seeking such an order.” *Id.* The Fifth Circuit affirmed. *Id.*

*Pinal Creek* and *Waco* are directly analogous to the present case. Both *Pinal Creek* and *Waco* involved attorneys testifying regarding “corporate norms” or “standards of care” in a way that permitted the jury to understand and assess the relevant facts. Mr. Branson’s testimony would involve directly analogous issues: partnership norms and standards of care within a

---

<sup>2</sup> Courts also regularly permit attorney/experts to testify regarding the relevant standard of care in legal malpractice cases. Such testimony inevitably involves discussion of the law and fiduciary duties in particular. *See, e.g., Davis v. Margolis*, 215 Conn. 408, 415-18, 576 A.2d 489, 493-94 (1990).

partnership. Of course, Mr. Branson would only testify regarding such norms and standards of care to the extent necessary to help the jury fully understand MRIA's claims.

As far as I.R.E. 702 is concerned, Mr. Branson's testimony is indistinguishable from the attorney/expert testimony admitted in *Walston*, *Vondenkamp*, *Naegele*, *Pinal Creek*, and *Waco*. Mr. Branson's testimony will help the jury. Moreover, Mr. Branson's testimony will not invade the province of this Court or the jury. This Court should deny SARMC's motion in limine.

**C. The Probative Value of Mr. Branson's Testimony Dramatically Outweighs Any Risk of Unfair Prejudice, Confusion, Delay, or Waste**

MRIA's claims arise from complicated business circumstances that are probably unfamiliar to the average juror. Mr. Branson's testimony will help the jury understand the business entities, expectations, and norms that form the factual background of MRIA's claims. As the preceding discussion demonstrates, many courts have permitted attorneys or law professors to serve as expert witnesses when they offer such background testimony that is helpful to the jury. Thus, the probative value of Mr. Branson's testimony is high.

SARMC has presented no substantial arguments that Mr. Branson's testimony creates a risk of unfair prejudice, confusion, delay, or waste. On the contrary, SARMC has designated its own witness (Mr. Schmidt) to discuss the business entities and the related norms that form the basis for MRIA's claims. (See SARMC's Third Supplemental Answer to MRIA's First Set of Interrogatories at 3.) According to SARMC, Mr. Schmidt intends testify that SARMC "acted in a reasonable and prudent manner under the circumstances ..." (*Id.*) Mr. Schmidt also intends to respond directly to the testimony of Mr. Branson. (*Id.* at 7.) SARMC's designation of Mr. Schmidt indicates that it recognizes the probative value of expert testimony regarding the complicated business circumstances involved in this case.

Mr. Branson's testimony poses no risk under I.R.E. 403. Mr. Branson's testimony will not duplicate other evidence presented or otherwise waste time. Rather than confuse issues, Mr. Branson's testimony will help the jury understand and fairly assess MRIA's claims. Thus, this Court should deny SARMC's motion in limine.

**D. The Court Can Ensure that Expert Testimony Does Not Invade the Province of the Court and the Jury**

This Court should deny the sweeping exclusion of Mr. Branson's testimony that SARMC seeks. As discussed, such wholesale exclusion would prevent the jury from hearing evidence that will increase understanding of the parties' claims and defenses. Much like MRIA, SARMC seeks to introduce expert testimony through an attorney. In particular, SARMC proposes that Mr. Schmidt testify that SARMC "acted in a reasonable and prudent manner under the circumstances; objectively fair and objectively in good faith in performing its obligations as a partner in [MRIA] with reference to the circumstances described in the Second Amended Counterclaim, Cross Claim and the answers thereto." (SARMC's Third Supplemental Answer to MRIA's First Set of Interrogatories at 3.)

This Court can ensure that both of Mr. Branson and Mr. Schmidt do not encroach on the province of the Judge or jury as it exercises its discretion under I.R.E. Rules 403 and 702. Courts that have permitted attorneys and law professors to serve as expert witnesses have taken measures like establishing boundaries for expert testimony or entering limiting instructions. *U.S. v. Bilzerian*, 926 F.2d 1285 (2nd Cir. 1991), affirmed a district court's decision to permit a law professor to testify regarding securities law. In support of its ruling, *Bilzerian* observed that the trial court "limited [the expert's] testimony regarding 13D's requirements by asking the jury to read specified instructions on the blank Schedule 13D and to ask Professor Coffee to clarify any

ambiguity in the instructions.” *Id.* *Bilzerian* also noted that the trial court “gave a limiting instruction indicating that the expert’s testimony was simply background information.” *Id.*

Similarly, *Waco Intern.* 278 F.3d at 533, upheld a trial court’s decision to permit an attorney to testify as an expert witness. *Waco* observed with approval that the district court instructed the jury to “consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves.” *Id.*; *see also Naegele*, 471 F.Supp.2d at 161-62 (stating that “[w]hile the Court intends to carefully circumscribe the testimony of [attorneys serving as expert witnesses] to avoid either of them impinging upon the province of the jury, the Court believes that each of them is qualified to testify as an expert on these matters and that their testimony would be helpful to the jury”); *Cornwell v. Safeco Ins. Co. of America*, 42 A.D.2d 127, 346 N.Y.S.2d 59 (N.Y.A.D. 1973) (rejecting the contention that “a new trial is required because the trial court erred in receiving the testimony of an attorney as an expert witness concerning the duties of an attorney to his client” on the basis that the trial court instructed the jury that “experts are called by parties because of their special knowledge pertaining to particular things” and that the jury “could accept or reject such testimony and that the jury need not give it any more weight than that of any other witness”).

This Court has at its disposal many alternatives less drastic than simply excluding the testimony of Mr. Branson. For example, this court may consider establishing boundaries for the testimony of Mr. Branson and Mr. Schmidt. As in *Cornwell*, this Court may consider giving the jury a limiting instruction that clarifies the role of Mr. Branson and all other expert witnesses.

Finally, this Court may also consider permitting the parties to propose hypotheticals<sup>3</sup> to Mr. Branson in a manner that will increase the jury's understanding of the facts while minimizing any risk that Mr. Branson will invade the province of the Court or jury.

**E. SARMC'S Motion in Limine Is Premature**

Any ruling on Mr. Branson's testimony would be premature. This Court can address the admissibility of Mr. Branson's testimony as part of its usual pretrial process. As this Court ruled in its Memorandum Decision of March 9, 2007:

Saint Alphonsus asks the Court to view their present motion as a motion in limine. The Court will decline to address the merits of the motion as a motion in limine at this time. ... And as is the custom of this Court, all motions in limine will be argued at the same time and not brought to the court's attention in a piecemeal fashion.

*Id.* at 8. SARMC has failed to demonstrate that it should not be required to abide by this unambiguous case-management ruling.

**II. CONCLUSION**

Mr. Branson's testimony is admissible under I.R.E. 403 and 702. Mr. Branson's testimony will help the jury understand the complicated factual circumstances from which MRIA's claims arise. Also, Mr. Branson's testimony is highly probative and the risk of unfair prejudice, confusion, delay, or waste is extremely low. For all of the foregoing reasons, this Court should deny SARMC's motion in limine.

---

<sup>3</sup> Parties may pose hypothetical questions to expert witnesses. *See Karlson v. Harris*, 140 Idaho 561, 565-67, 97 P.3d 428, 432-34 (2004). "A hypothetical question is a form of question in which facts that an attorney claims or assumes to have been proved are stated as a hypothesis and on which an expert is then asked to state an opinion." *Id.* at 565-66, 433-34. "The facts upon which a hypothetical question is based must be admitted by the adverse party or be supported in the evidence in the record at the time the question is propounded." *Id.* at 567, 434. Under I.R.E. 702, "[a]n expert may base an opinion or inference upon facts or data perceived by or made known to the expert at or before the hearing." *Id.* (punctuation omitted).

DATED this 1 day of May, 2007.

GREENER BANDUCCI SHOEMAKER P.A.

A handwritten signature in black ink, appearing to read 'Thomas A. Banducci', is written over a horizontal line.

Thomas A. Banducci  
G. Rey Reinhardt, IV  
Daniel J. Gordon  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1 day of May, 2007, a true and correct copy of the within and foregoing instrument was served upon:

Warren E. Jones  
EBERLE BERLIN  
300 N. 6th Street, 2nd Floor  
Post Office Box 1368  
Boise, ID 83701  
[Attorneys for Third-Party Defendants]

- ☐ U.S. Mail  
☐ Facsimile (208) 344-8542  
☒ Hand Delivery  
☐ Overnight Delivery

Rodney R. Saetrum  
SAETRUM LAW OFFICES  
101 South Capitol Boulevard  
Suite 1800  
Boise, ID 83702  
[Attorneys for Third-Party Defendants]

- ☐ U.S. Mail  
☐ Facsimile (208) 336-0448  
☒ Hand Delivery  
☐ Overnight Delivery

Jack S. Gjording  
GJORDING & FOUSER  
509 West Hayes  
Post Office Box 2837  
Boise, ID 83701  
[Attorneys for Plaintiff/Counter-Defendants]

- ☐ U.S. Mail  
☐ Facsimile (208) 336-9177  
☒ Hand Delivery  
☐ Overnight Delivery

Patrick J. Miller  
GIVENS PURSLEY, LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, Idaho 83701-2720  
[Attorneys for Plaintiff/Counter-Defendants]

- ☐ U.S. Mail  
☐ Facsimile (208) 388-1300  
☒ Hand Delivery  
☐ Overnight Delivery



Thomas A. Banducci  
G. Rey Reinhardt IV  
Daniel J. Gordon

1 • 3

NO. 10-25  
ALL 10:25 PM

**Jack S. Gjording, ISB No. 1105**  
**Trudy Hanson Fouser, ISB No. 2794**  
**Bobbi K. Dominick, of Counsel, ISB No. 2895**  
**GJORDING & FOUSER, PLLC**  
509 W. Hays Street  
P.O. Box 2837  
Boise, Idaho 83701  
Telephone: (208)336-9777  
Facsimile: (208)336-9177

**MAY 02 2007**

**J. DAVID NAVARRO, Clerk**  
By **L. AMES**  
DEPUTY

**Patrick J. Miller, ISB No. 3221**  
**GIVENS PURSLEY LLP**  
601 W. Bannock Street  
P.O. Box 2720  
Boise, ID 83701-2720  
Telephone: (208) 388-1200  
Facsimile: (208) 388-1300

Attorneys for Plaintiff/CounterDefendants

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE**  
**STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

SAINT ALPHONSUS DIVERSIFIED  
CARE, INC., an Idaho nonprofit corporation,

Plaintiff,

vs.

MRI ASSOCIATES, LLP, an Idaho limited  
liability partnership,

Defendant.

Case No. CV OC 0408219D

**SAINT ALPHONSUS' MOTION  
FOR PROTECTIVE ORDER  
REGARDING DISCOVERY  
DEPOSITIONS OF GRANT  
CHAMBERLAIN AND CINDY  
SCHAMP**



MRI ASSOCIATES, LLP, an Idaho limited liability partnership, on its own behalf, and on behalf of MRI Limited, an Idaho Limited Partnership, and MRI Mobile Limited, an Idaho Limited Partnership,

Counterclaimants,

vs.

SAINT ALPHONSUS DIVERSIFIED CARE, INC., an Idaho nonprofit corporation; SAINT ALPHONSUS REGIONAL MEDICAL CENTER,

Counterdefendants.

---

MRI ASSOCIATES, LLP, an Idaho limited liability partnership,

Third-Party Plaintiff,

vs.

INTERMOUNTAIN MEDICAL IMAGING, LLC, an Idaho limited liability company; GEM STATE RADIOLOGY, LLP, an Idaho limited liability partnership; and IMAGING CENTER RADIOLOGISTS, LLP, an Idaho limited liability partnership,

Third-Party Defendants.

---

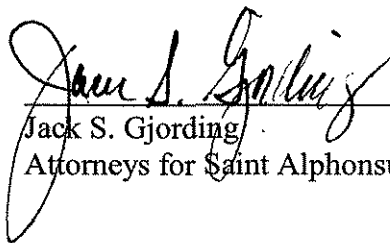
Saint Alphonsus Diversified Care, Inc., and Saint Alphonsus Regional Medical Center, Inc. (collectively, "Saint Alphonsus"), and pursuant to Rule 26(c) of the Idaho Rules of Civil Procedure, hereby move this Court for a protective order prohibiting the further discovery depositions of Grant Chamberlain and Cindy Schamp. Saint Alphonsus does not, however, oppose MRI Associates' taking of Mr. Chamberlain and Ms. Schamp's deposition for preservation of trial testimony.

This motion is based upon the Memorandum and Affidavit submitted in connection herewith. As further detailed in those papers, Mr. Chamberlain and Ms. Schamp are out-of-state non-parties who have previously voluntarily submitted for full and complete discovery depositions. Saint Alphonsus further submits MRI Associates simply wants to redepose these individuals after having conducted other discovery in this case.

ORAL ARGUMENT IS REQUESTED.

DATED this 1<sup>st</sup> day of May 2007.

GJORDING & FOUSER, PLLC



---

Jack S. Gjording  
Attorneys for Saint Alphonsus

# CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May 2007, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Thomas A. Banducci  
GREENER BANDUCCI SHOEMAKER P.A.  
950 West Bannock, Suite 900  
Boise, ID 83702  
Facsimile (208) 319-2601

- ☐ U.S. mail, postage prepaid
- ☐ express mail
- ☐ hand delivery
- ☒ facsimile

Warren E. Jones  
Joseph H. Uberuaga  
EBERLE BERLIN KADING TURNBOW  
McKLVEEN & JONES  
300 N. 6<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Boise, ID 83702  
Facsimile (208) 344-8542

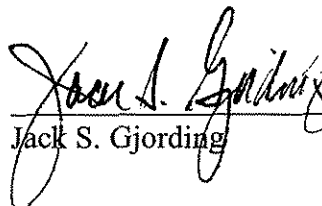
- ☐ U.S. mail, postage prepaid
- ☐ express mail
- ☐ hand delivery
- ☒ facsimile

Rodney R. Saetrum  
SAETRUM LAW OFFICES  
101 S. Capitol Boulevard, Suite 1800  
Boise, ID 83702  
Facsimile (208) 336-0448

- ☐ U.S. mail, postage prepaid
- ☐ express mail
- ☐ hand delivery
- ☒ facsimile

Patrick J. Miller  
GIVENS PURSLEY LLP  
601 West Bannock Street  
P.O. Box 2720  
Boise, ID 83701  
Facsimile (208) 388-1300

- ☐ U.S. mail, postage prepaid
- ☐ express mail
- ☐ hand delivery
- ☒ facsimile

  
\_\_\_\_\_  
Jack S. Gjording